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Chapter I—Production and Marketing Administration (Standards, Inspections, Marketing Practices), Department of Agriculture

PART 52—PROCESSED FRUITS AND VEGETABLES, PROCESSED PRODUCTS THEREOF, AND CERTAIN OTHER PROCESSED FOOD PRODUCTS

SUBPART B—UNITED STATES STANDARDS[1]

GRADES OF TOMATO CATSUP[1]

On April 24, 1953 a Notice of Proposed Rule Making was published in the FEDERAL REGISTER (18 F. R. 2415) regarding a proposed revision of the United States Standards for Grades of Tomato Catsup. After consideration of all relevant matters presented, including the proposals set forth in the aforesaid notice, the following revised United States Standards for Grades of Tomato Catsup are hereby promulgated under the authority contained in the Agricultural Marketing Act of 1946 (60 Stat. 1087; 7 U. S. C. 1621, et seq.)

§ 52.683 *Tomato catsup.* Tomato catsup means the product as defined in the standard of identity for catsup, ketchup, catchup (21 CFR 53.10) issued pursuant to the Federal Food, Drug, and Cosmetic Act.

(a) *Grades of tomato catsup.* (1) "U. S. Grade A" or "U. S. Fancy" is the quality of tomato catsup that possesses a good color; that possesses a good consistency that is practically free from defects; that possesses a good flavor; that possesses a good finish; that has a total solids content of not less than 33 percent, by weight; and that scores not less than 85 points when scored in accordance with the scoring system outlined in this section.

(2) "U. S. Grade B" or "U. S. Extra Standard" is the quality of tomato catsup that possesses a good color; that possesses a good consistency that is practically free from defects; that possesses a good flavor; that possesses a good finish; that has a total solids content of not less than 29 percent, by weight; and that scores not less than 85 points when scored in accordance with the scoring system outlined in this section: *Provided,* That the tomato catsup may score not less than 18 points for the factor of consistency if the total score is not less than 85 points.

(3) "U. S. Grade C" or "U. S. Standard" is the quality of tomato catsup that possesses a fairly good color; that possesses a fairly good consistency; that is fairly free from defects; that possesses a good finish; that possesses a fairly good flavor; that has a total solids content of not less than 25 percent, by weight; and that scores not less than 70 points when scored in accordance with the scoring system outlined in this section.

(4) "Substandard" is the quality of tomato catsup that fails to meet the requirements of U. S. Grade C or U. S. Standard.

(b) *Recommended fill of container for tomato catsup.* The recommended fill of container is not incorporated in the grades of the finished product since fill of container, as such, is not a factor of quality for the purposes of these grades. It is recommended that each container of tomato catsup be filled as full as practicable without impairment of quality and that the product occupy not less than 90 percent of the capacity of the container.

(c) *Ascertaining the grade.* (1) The grade of tomato catsup is ascertained by considering in conjunction with the requirements of the respective grade, the respective ratings for the factors of color, consistency, absence of defects, and flavor. The relative importance of each factor which is scored is expressed numerically on the scale of 100. The maximum number of points that may be given such factors are:

Factors:	Points
(i) Color	25
(ii) Consistency	25
(iii) Absence of defects	25
(iv) Flavor	25
Total score	100

(Continued on p. 4445)

[1] The requirements of these standards shall not excuse failure to comply with the provisions of the Federal Food, Drug, and Cosmetic Act.

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CODIFICATION GUIDE

A numerical list of the parts of the Code of Federal Regulations affected by documents published in this issue. Proposed rules, as opposed to final actions, are identified as such.

CODIFICATION GUIDE—Con.

(d) *Ascertaining the rating for the factors which are scored.* The essential variations within each factor which is scored are so described that the value may be ascertained for each factor and expressed numerically. The numerical range within each factor which is scored is inclusive (for example, 17 to 20 points means 17, 18, 19, or 20 points)

(1) *Color.* The amount of red in the tomato catsup is determined by comparing the color of the product with that produced by spinning a combination of the following Munsell color discs:

Disc 1—Red (5R 2.6/13) (glossy finish).
Disc 2—Yellow (2.5YR 5/12) (glossy finish).
Disc 3—Black (N1) (glossy finish).
Disc 4—Gray (N4) (mat finish).

(i) Tomato catsup that possesses a good color may be given a score of 21 to 25 points. "Good color" means that the color is typical of tomato catsup made from well ripened red tomatoes and which has been properly prepared and properly processed. Such color contains as much or more red than that produced by spinning the specified Munsell color discs in the following combinations: 65 percent of the area of Disc 1; 21 percent of the area of Disc 2; 14 percent of the area of either Disc 3 or Disc 4, or 7 percent of the area of Disc 3 and 7 percent of the area of Disc 4 whichever most nearly matches the reflectance of the tomato catsup. To receive a score in this classification, tomato catsup, when packed in glass, shall show no discoloration in the "neck" of the bottle.

(ii) If the tomato catsup possesses a fairly good color, a score of 17 to 20 points may be given. Tomato catsup that falls into this classification shall not be graded above U. S. Grade C or U. S. Standard, regardless of the total score for the product (this is a limiting rule) "Fairly good color" means that the color is typical of tomato catsup and contains as much or more red than that produced by spinning the specified Munsell color discs in the following combinations: 53 percent of the area of Disc 1, 28 percent of the area of Disc 2; 19 percent of the area of either Disc 3 or Disc 4, or 9½ percent of the area of Disc 3 and 9½ percent of the area of Disc 4 whichever most nearly matches the reflectance of the tomato catsup.

(iii) Tomato catsup that fails to meet the requirements of subdivision (ii) of this subparagraph may be given a score of 0 to 16 points and shall not be graded above Substandard, regardless of the total score for the product (this is a limiting rule).

(2) *Consistency.* The factor of consistency refers to the viscosity of the product and the tendency to hold its liquid portion in suspension.

(i) Tomato catsup that possesses a good consistency may be given a score of 22 to 25 points. "Good consistency" means that the tomato catsup shows not more than a slight separation of free liquid when poured on a flat grading tray and is not excessively stiff; and flows not more than 9 centimeters in 30 seconds at 20 degrees Centigrade in the Bostwick consistometer.

(ii) If the tomato catsup possesses a fairly good consistency, a score of 18 to 21 points may be given. Tomato catsup that falls into this classification shall not be graded above U. S. Grade B or U. S. Extra Standard, regardless of the total score for the product (this is a limiting rule) "Fairly good consistency" means that the tomato catsup may show a noticeable, but not excessive, separation of free liquid when poured on a flat grading tray; is not excessively stiff; and flows not more than 14 centimeters in 30 seconds at 20 degrees Centigrade in the Bostwick consistometer.

(iii) Tomato catsup that fails to meet the requirements of subdivision (ii) of this subparagraph may be given a score of 0 to 17 points and shall not be graded above Substandard, regardless of the total score for the product (this is a limiting rule)

(3) *Absence of defects.* The factor of absence of defects refers to the degree of freedom from defects such as: dark specks or scale-like particles, seeds, particles of seed, tomato peel, core material, or other similar substances. This factor is evaluated by observing a layer of the product on a smooth white, flat surface. Such layer is prepared by drawing a scraper with a clearance of 3/32 inch high by 7 inches long rapidly through the product in two horizontal planes so as to form an approximate square.

(i) Tomato catsup that is practically free from defects may be given a score of 21 to 25 points. "Practically free from defects" means that any defects present do not more than slightly affect the appearance or eating quality of the product.

(ii) If the tomato catsup is fairly free from defects, a score of 18 to 20 points may be given. Tomato catsup that falls into this classification shall not be scored above U. S. Grade C or U. S. Standard, regardless of the total score for the product (this is a limiting rule). "Fairly free from defects" means that any defects present may be noticeable but are not so large, so numerous, or of such contrasting color as to seriously affect the appearance or eating quality of the product.

(iii) Tomato catsup that fails to meet the requirements of subdivision (ii) of this subparagraph may be given a score of 0 to 17 points and shall not be graded above Substandard, regardless of the total score for the product (this is a limiting rule)

(4) *Flavor* (i) Tomato catsup that possesses a good flavor may be given a score of 21 to 25 points. "Good flavor" means a good, distinct flavor characteristic of good quality ingredients. Such flavor is free from scorching or any objectionable flavor of any kind.

(ii) If the tomato catsup possesses only a fairly good flavor, a score of 17 to 20 points may be given. Tomato catsup that falls into this classification shall not be graded above U. S. Grade C or U. S. Standard, regardless of the total score for the product (this is a limiting rule). "Fairly good flavor" means a flavor characteristic of the ingredients in which there may be slight traces of undesirable flavor such as scorched, bitter, or astringent, but is free from objectionable or off flavors of any kind.

(iii) Tomato catsup that fails to meet the requirements of subdivision (ii) of this subparagraph may be given a score of 0 to 16 points and shall not be graded above Substandard, regardless of the total score for the product (this is a limiting rule).

(e) *Definition of terms used in these standards.* (1) "Total solids" in tomato catsup for the purposes of these standards is the refractometric sucrose value of the filtrate determined in accordance with the International Scale of Refractive Indices of Sucrose Solutions to which value is added 1 percent.

(2) "Good finish" means that the product has a uniform, smooth texture.

(f) *Tolerances for certification of officially drawn samples.* (1) When certifying samples that have been officially drawn and which represent a specific lot of tomato catsup, the grade for such lot will be determined by averaging the total scores of the containers comprising the sample, if, with respect to those factors which are scored:

(i) Not more than one-sixth of the containers fails to meet the grade indicated by the average of such total scores;

(ii) None of the containers falls more than 4 points below the minimum score for the grade indicated by the average of such total scores;

(iii) None of the containers falls more than one grade below the grade indicated by the average of such total scores;

(iv) The average score of all containers for any factor subject to a limiting rule must be within the score range of that factor for the grade indicated by the average of the total scores of the containers comprising the sample; and

(2) All containers comprising the sample meet all applicable standards of quality promulgated under the Federal Food, Drug, and Cosmetic Act and in effect at the time of the aforesaid certification.

(g) *Score sheet for tomato catsup.*

Type of container		----
Container size		----
Container mark		----
Label		----
Net weight or volume		----
Total solids		----
Vacuum readings		----
Factors	**Score points**	
I. Color	25 (A–B) 21–25; (C) [1] 17–20; (SStd.) [1] 0–16	
II. Consistency	25 (A–B) 22–25; (C) [1] 18–21; (SStd.) [1] 0–17	
III. Absence of defects	25 (A–B) 21–25; (C) [1] 18–20; (SStd.) [1] 0–17	
IV. Flavor	25 (A–B) 21–25; (C) [1] 17–20; (SStd.) [1] 0–16	
Total score	100	
Normal flavor and odor		----
Grade		----

[1] Indicates limiting rule.

Effective time and supersedure. The revised United States Standards for Grades of Tomato Catsup (which is the fourth issue) contained in this section will become effective thirty days after the date of publication of these standards in the FEDERAL REGISTER and will supersede the United States Standards for Grades of Tomato Catsup which have been in effect since April 15, 1941.

(Sec. 205, 60 Stat. 1090; 7 U. S. C. 1624)

Issued at Washington, D. C., this 27th day of July 1953.

[SEAL] M. B. BRASWELL,
Deputy Administrator Production and Marketing Administration.

[F. R. Doc. 53-6685; Filed, July 29, 1953; 8:52 a. m.]

Chapter IX—Production and Marketing Administration (Marketing Agreements and Orders), Department of Agriculture

PART 903—MILK IN THE ST. LOUIS, MISSOURI, MARKETING AREA

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AUTHORITY: §§ 903.0 to 903.103 issued under sec. 5, 49 Stat. 753, as amended; 7 U. S. C. and Sup. 608c.

§ 903.0 *Findings and determinations.* The findings and determinations hereinafter set forth are supplementary and in addition to the findings and determinations previously made in connection with the issuance of the aforesaid order and of each of the previously issued amendments thereto; and all of said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(a) *Findings upon the basis of the hearing record.* Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U. S. C. 601 et seq.) and the applicable rules of practice and procedure, as amended, governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), a public hearing was held March 2–6, 1953 at St. Louis, Missouri, upon certain proposed amendments to the tentative marketing agreement and to the order, as amended, regulating the handling of milk in the St. Louis, Missouri, marketing area. Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said order, as amended, and as hereby further amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the act;

(2) The parity prices of milk produced for sale in the said marketing area as determined pursuant to section 2 of the act are not reasonable in view of the price of feeds, available supplies of feeds and other economic conditions which affect market supplies of and demand for such milk, and the minimum prices specified in the order, as amended, and as hereby further amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk and be in the public interest;

(3) The said order, as amended, and as hereby further amended, regulates the handling of milk in the same manner as and is applicable only to persons in the respective classes of industrial and commercial activity specified in a marketing agreement upon which a hearing has been held; and

(4) It is hereby found that the necessary expenses of the market administrator for maintenance and functioning of such agency will require the payment by each handler, as his pro rata share of such expenses 2½ cents per hundredweight or such lesser amount as the Secretary may prescribe with respect to all milk (i) received from producers, (ii) received from other sources and classified as Class I or (iii) distributed as Class I in the marketing area from a non-pool plant.

(b) *Additional findings.* It is necessary in the public interest to make this order amending the order, as amended, effective not later than August 1, 1953. Any delay beyond that date in the effective date of this order amending the order, as amended, will seriously threaten the orderly marketing of milk in the St. Louis, Missouri, marketing area. The provisions of the said order are well known to handlers—the public hearing having been held on March 2–6, 1953, the recommended decision having been published in the FEDERAL REGISTER on May 23, 1953 (18 F R. 2983) and the final decision having been published in the FEDERAL REGISTER on July 15, 1953 (18 F R. 4123) Therefore, reasonable time has been afforded persons affected to prepare for its effective date. In view of the foregoing, it is hereby found and determined that good cause exists for making this order amending the order, as amended, effective August 1, 1953, and that it would be contrary to the public interest to delay the effective date of this amendment for 30 days after its publication in the FEDERAL REGISTER. (See sec. 4 (c), Administrative Procedure Act, 5 U. S. C. 1001 et seq.)

(c) *Determinations.* It is hereby determined that handlers (excluding coop-

erative associations of producers who are not engaged in processing, distributing, or shipping milk covered by this order amending the order, as amended) of more than 50 percent of the milk covered by this order amending the order, as amended, which is marketed within the St. Louis, Missouri, marketing area refused or failed to sign the proposed marketing agreement regulating the handling of milk in the said marketing area and it is hereby further determined that:

(1) The refusal or failure of such handlers to sign said proposed marketing agreement tends to prevent the effectuation of the declared policy of the act;

(2) The issuance of this order amending the order, as amended, is the only practical means pursuant to the declared policy of the act of advancing the interests of producers of milk which is produced for sale in the marketing area; and

(3) The issuance of this order amending the order, as amended, is approved or favored by at least two-thirds of the producers who participated in a referendum thereon and who, during the determined representative period (May 1953) were engaged in the production of milk for sale in the said marketing area.

Order relative to handling. It is therefore ordered that on and after the effective date hereof the handling of milk in the St. Louis, Missouri, marketing area shall be in conformity to and in compliance with the terms and conditions of the aforesaid order, as amended, and as hereby further amended, and the aforesaid order, as amended, is hereby further amended to read as follows:

DEFINITIONS

§ 903.1 *Act.* "Act" means Public Act No. 10, 73d Congress, as amended, and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended (7 U. S. C. 601 et seq.)

§ 903.2 *Secretary.* "Secretary" means the Secretary of Agriculture or any officer or employee of the United States authorized to exercise the powers and to perform the duties, pursuant to the act, of the Secretary of Agriculture.

§ 903.3 *Department of Agriculture.* "Department of Agriculture" means the United States Department of Agriculture or any other Federal agency as may be authorized by act of Congress or by Executive order to perform the price reporting functions of the United States Department of Agriculture.

§ 903.4 *Person.* "Person" means any individual, partnership, corporation, association, or any other business unit.

§ 903.5 *St. Louis, Missouri, marketing area.* "St. Louis, Missouri, marketing area," hereinafter called the "marketing area," means the territory within the corporate limits of the City of St. Louis and the territory within St. Louis County, both in Missouri; and the territory within Scott Military Reservation, and East St. Louis, Centreville, Canteen, and Stites Townships, and the City of Belleville, all in St. Clair County, Illinois.

§ 903.6 *Delivery period.* "Delivery period" means a calendar month, or the portion thereof during which this subpart or any amendment thereto is in effect.

§ 903.7 *Producer.* "Producer" means any person who produces milk under a dairy farm permit issued by a health authority duly authorized to administer regulations governing the quality of milk disposed of in the marketing area, which milk is delivered from the farm to a pool plant or diverted during the months of March through July from a pool plant to a non-pool plant for the account of a handler. Milk so diverted shall be deemed to have been received at the pool plant from which diverted if diverted for the account of the operator of such plant. Milk so diverted by a cooperative shall be deemed to have been received by the cooperative. This definition shall not include a person who produces milk which is received at the plant of a handler partially exempt from the provisions of this subpart pursuant to § 903.61 with respect to milk received by such handler.

§ 903.8 *City plant.* "City plant" means a plant where milk is processed and packaged and from which milk, skim milk or cream is disposed of as Class I milk in the marketing area to wholesale or retail outlets (including sales through vendors or plant stores) other than city or country plants.

§ 903.9 *Country plant.* "Country plant" means a plant, except a city plant, at which milk is received from dairy farmers producing milk under a dairy farm permit issued by a health authority duly authorized to administer regulations governing the quality of milk disposed of in the marketing area, and which plant is aproved by such health authority to furnish milk to a city plant.

§ 903.10 *Pool plant.* "Pool plant" means:

(a) A city plant which disposes during the delivery period of not less than 50 percent of its receipts of producer milk and approved milk from plants qualified pursuant to paragraphs (b) or (c) of this section as Class I milk on routes to wholesale or retail outlets (including plant stores) and from which no less than 20 percent of such receipts are distributed as Class I milk during the delivery period on routes to wholesale or retail outlets (including plant stores) located in the marketing area;

(b) A city or country plant from which no less than 50 percent of its approved milk, during the delivery period, is shipped to pool plants and assigned as reserve supply credit, pursuant to § 903.11, or distributed on routes to retail or wholesale outlets (including plant stores) located in the marketing area: *Provided,* That if a country plant ships to pool plants and has assigned as reserve supply credit, pursuant to § 903.11, at least 75 percent of its producer milk in October and November and at least 35 percent of such milk in three additional months during the months of August through January, inclusive, such plant shall, upon written application to the market administrator on or before January 31 of any year, be designated as a pool plant until the end of any month during the succeeding August through January period in which the milk of such plant is disposed of in such a way that it becomes impossible for the plant to reestablish its qualification under the terms of this proviso;

(c) Any plant which was a country plant pursuant to this subpart during the month of March 1953: *Provided,* That the operator of such plant submits written application to the market administrator to be designated as a pool plant on or before the tenth day after the effective date of this subpart: *And provided further* That the status of such plant as a pool plant shall terminate effective at the end of any month from August through January during which the milk from such plant is disposed of in such a way that it becomes impossible for the plant to establish qualification under the proviso of paragraph (b) of this section; or

(d) Any plant which was a city plant pursuant to this subpart during the month of March 1953: *Provided,* That the operator of such plant submits written application to the market administrator to be designated as a pool plant on or before the tenth day after the effective date of this subpart: *And, provided further* That the status of such plant as a pool plant pursuant to this paragraph shall be limited to a period of two months from the effective date of this subpart.

§ 903.11 *Reserve supply credit.* The hundredweight of reserve supply credit which may be assigned to approved milk transferred to a pool plant shall be calculated for each delivery period as follows: Deduct from the total hundredweight of skim milk and butterfat disposed of from the transferee-plant as Class I milk on routes to retail or wholesale outlets (including plant stores) an amount calculated by multiplying the hundredweight of producer milk at such plant by 0.85. Any plus figure resulting from this calculation shall be known as reserve supply credit and shall be assigned pro rata to Class I approved milk received from country plants: *Provided,* That if the operator of the transferee plant notifies the market administrator in writing on or before the 7th day after the end of the delivery period during which the milk was received from producers of an assignment to Class I approved milk received from other plants other than that specified in this subpart, such other assignment shall be allowed.

§ 903.12 *Non-pool plant.* "A non-pool plant" is any milk distributing, manufacturing, or processing plant other than a pool plant.

§ 903.13 *Handler.* "Handler" means: (a) Any person in his capacity as the operator of a city plant or a country plant; (b) a producer-handler; or (c) a cooperative association qualified pursuant to § 903.88 (b) with respect to milk from producers diverted for the account of such association from a pool plant to a non-pool plant.

§ 903.14 *Producer-handler.* "Producer-handler" means any person who

is a producer and who processes milk from his own farm production, distributing all or a portion of such milk within the marketing area as Class I milk, but who receives no other source milk or milk from other producers.

§ 903.15 *Producer milk.* "Producer milk" means only that skim milk or butterfat contained in milk (a) received at the pool plant directly from producers, or (b) diverted from a pool plant to a nonpool plant in accordance with the conditions set forth in § 903.7.

§ 903.16 *Approved milk.* "Approved milk" means any skim milk or butterfat contained in producer milk or in milk, skim milk or cream which is received from a pool plant, except the plant of a producer-handler, and which is approved by the appropriate health authority for distribution as Class I milk in the marketing area.

§ 903.17 *Other source milk.* "Other source milk" means all skim milk and butterfat received in any form except (a) approved milk, or (b) Class II non-fluid milk products which are received and disposed of without further processing or packaging.

MARKET ADMINISTRATOR

§ 903.20 *Designation.* The agency for the administration of this subpart shall be a market administrator, selected by the Secretary, who shall be entitled to such compensation as may be determined by and shall be subject to removal at the discretion of, the Secretary.

§ 903.21 *Powers.* The market administrator shall have the following powers with respect to this subpart:

(a) To administer its terms and provisions;

(b) To receive, investigate, and report to the Secretary complaints of violations;

(c) To make rules and regulations to effectuate its terms and provisions; and

(d) To recommend amendments to the Secretary.

§ 903.22 *Duties.* The market administrator shall perform all duties necessary to administer the terms and provisions of this subpart, including, but not limited to, the following:

(a) Within 45 days following the date on which he enters upon his duties or such lesser period as may be prescribed by the Secretary, execute and deliver to the Secretary a bond, effective as of the date on which he enters upon his duties and conditioned upon the faithful performance of such duties, in an amount and with surety thereon satisfactory to the Secretary;

(b) Employ and fix the compensation of such persons as may be necessary to enable him to administer its terms and provisions;

(c) Obtain a bond in a reasonable amount and with reasonable surety thereon covering each employee who handles funds entrusted to the market administrator;

(d) Pay, out of the funds received pursuant to § 903.87, the cost of his bond and of the bonds of his employees, his own compensation and all other expenses (except those incurred under § 903.88), necessarily incurred by him in the maintenance and functioning of his office and in the performance of his duties;

(e) Keep such books and records as will clearly reflect the transactions provided for in this subpart and submit such books and records to examination by the Secretary as requested;

(f) Furnish such information and such verified reports as the Secretary may request;

(g) Prepare and disseminate, for the benefit of producers, consumers, and handlers, such statistics and information concerning the operation of this subpart as do not reveal confidential information;

(h) Publicly disclose to handlers and producers, at his discretion, the name of any handler who, after the date on which he is required to perform such acts, has not made reports pursuant to §§ 903.30 to 903.33 or payments pursuant to §§ 903.80 to 903.87.

(i) Verify all reports and payments of each handler by audit, if necessary, of such handler's records and the records of any other handler or person upon whose utilization the classification of skim milk and butterfat for such handler depends; and

(j) Publicly announce on or before:

(1) The 6th day of each delivery period the minimum price for Class I milk pursuant to § 903.51 (a) and the Class I butterfat differential pursuant to § 903.53 (a) both for the current delivery period; and the minimum price for Class II milk pursuant to § 903.51 (b) and the Class II butterfat differential pursuant to § 903.53 (b) both for the preceding delivery period; and

(2) The 11th day after the end of each delivery period, the uniform price pursuant to § 903.71 and the producer butterfat differential pursuant to § 903.81.

REPORTS, RECORDS AND FACILITIES

§ 903.30 *Reports of receipts and utilization.* On or before the 7th day after the end of each delivery period, each handler, except a producer-handler, shall report for such delivery period to the market administrator in the detail and on forms prescribed by the market administrator:

(a) The quantities of skim milk and butterfat contained in all receipts at each of his city and country plants of (1) milk from producers, (2) skim milk or butterfat in any form from pool plants, and (3) other source milk;

(b) The quantities of skim milk and butterfat contained in milk diverted to non-pool plants;

(c) The utilization at each of his city or country plants of all skim milk and butterfat required to be reported pursuant to paragraphs (a) and (b) of this section, including a separate statement of the disposition of Class I milk outside the marketing area,

(d) The name and address of each producer from whom milk is received for the first time, and the date on which such milk was first received; and

(e) The name and address of each producer who discontinues deliveries of milk, and the date on which milk was last received from such producer.

§ 903.31 *Reports of payments to producers.* On or before the 20th day after the end of each delivery period, each handler shall report to the market administrator his producer payroll for such delivery period which shall show for each producer (a) the total pounds of milk received from such producer with the average butterfat test thereof, (b) the net amount of the payment made to such producer together with the price, deductions, and charges involved, and (c) the amount and nature of any payments made pursuant to § 903.86.

§ 903.32 *Reports of transportation rates.* On or before the 10th day after the request of the market administrator, each handler shall submit a schedule of transportation rates which are charged and paid for the transportation of milk from the farm of each producer to such handler's plant. Any changes made in this schedule of transportation rates and the effective dates thereof shall be reported to the market administrator within 10 days.

§ 903.33 *Reports of producer-handlers.* Each producer-handler shall make reports to the market administrator at such time and in such manner as the market administrator may request and shall permit the market administrator to verify such reports.

§ 903.34 *Records and facilities.* Each handler shall keep adequate records of receipts and utilization of all skim milk and butterfat and shall, during the usual hours of business, make available for such examination of the market administrator or his representative all records, facilities, operations, and equipment as the market administrator deems necessary to (a) verify the receipts and utilization of all skim milk and butterfat and, in case of errors or omissions, ascertain the correct figure; (b) weigh, sample, and test for butterfat and other content all milk and milk products handled; and (c) verify payments to producers.

§ 903.35 *Retention of records.* All books and records required under this subpart to be made available to the market administrator shall be retained by the handler for a period of 3 years to begin at the end of the calendar month to which such books and records pertain: *Provided,* That if, within such 3-year period, the market administrator notifies the handler in writing that the retention of such books and records, or of specified books and records, is necessary in connection with a proceeding under section 8c (15) (A) of the act or a court action specified in such notice, the handler shall retain such books and records, or specified books and records, until further written notification from the market administrator. In either case, the market administrator shall give further written notification to the handler promptly upon the termination of the litigation or when the records are no longer necessary in connection therewith.

CLASSIFICATION OF MILK

§ 903.40 *Basis of classification.* All skim milk and butterfat received by a

handler at a city or country plant and which is required to be reported pursuant to § 903.30 shall be classified by the market administrator pursuant to the provisions of §§ 903.41 through 903.46.

§ 903.41 *Classes of utilization.* Subject to the conditions set forth in §§ 903.42 and 903.43, the classes of utilization shall be as follows:

(a) Class I milk shall be all skim milk (including reconstituted skim milk) and butterfat:

(1) Disposed of in fluid form as milk, skim milk, buttermilk, milk drinks (plain or flavored), cream (fresh, frozen, or sour)

(2) In milk, flavored milk, or flavored milk drinks in concentrated form (fresh or frozen) not sterilized, packaged and disposed of on routes or through plant stores for fluid consumption; and

(3) Not specifically accounted for as Class II milk.

(b) Class II milk shall be all skim milk and butterfat accounted for:

(1) As having been used or disposed of in any product other than those specified in Class I milk;

(2) In inventory variations of milk, skim milk, cream, or any Class I product; and

(3) In shrinkage allocated to producer milk, except milk diverted to a non-pool plant pursuant to § 903.7, but not in excess of 2 percent of such receipts of skim milk and butterfat, respectively, and in shrinkage allocated to receipts of other source milk: *Provided,* That shrinkage of skim milk and butterfat, respectively, shall be allocated pro rata to skim milk and butterfat in producer milk and in other source milk received from non-pool plants or from dairy farmers.

§ 903.42 *Responsibility of handlers and reclassification of milk.* (a) All skim milk and butterfat shall be classified as Class I milk unless the handler who first receives such skim milk and butterfat proves to the market administrator that such skim milk and butterfat should be classified in another class.

(b) Any skim milk or butterfat classified in one class shall be reclassified if used or reused by such handler or by another handler (except a producer-handler) in another class.

§ 903.43 *Transfers.* (a) Skim milk and butterfat disposed of in the form of milk, skim milk, or cream by transfer from a pool plant to a pool plant of another handler, except a producer-handler, shall be classified as Class I milk unless utilization in another class is mutually indicated in writing to the market administrator by both handlers on or before the 7th day after the end of the delivery period within which such transaction occurred, in which case such skim milk and butterfat shall be classified according to such mutual agreement: *Provided,* That skim milk or butterfat so assigned to Class II milk shall be limited to the amount thereof remaining in such class in the plant of the transferee-handler after the subtraction of other source milk pursuant to § 903.45, and transfers of skim milk or butterfat, respectively, in excess of that so remaining shall be assigned to Class I milk.

(b) Skim milk and butterfat disposed of in the form of milk, skim milk, or cream by transfer or diversion from a pool plant to a producer-handler shall be classified as Class I milk.

(c) Skim milk and butterfat disposed of in the form of milk, skim milk, or cream by transfer or diversion from a pool plant to a non-pool plant shall be classified as Class I milk unless:

(1) The product is transferred or diverted in bulk form or in producer cans;

(2) The transferee-plant is located within 110 airline miles from the City Hall in St. Louis, Missouri, or in the State of Missouri south of the Missouri River and the handler claims Class II on the basis of a utilization mutually indicated in writing to the market administrator by both the handler and the operator of the transferee-plant on or before the 7th day after the end of the delivery period within which such transaction occurred;

(3) The operator of the transferee-plant maintains books and records, showing the utilization of all skim milk and butterfat received in any form at such plant, which are made available if requested by the market administrator for the purpose of verification; and

(4) Equivalent amounts of skim milk and butterfat, respectively, were actually utilized in the transferee-plant in the use claimed: *Provided,* That if less than equivalent amounts of skim milk and butterfat, respectively, were actually used in the claimed use, the difference shall be classified as Class I milk.

(d) Skim milk and butterfat disposed of in the form of milk, skim milk, or cream, from a pool plant to retail establishments shall be classified as Class I milk: *Provided,* That skim milk and butterfat contained in milk, skim milk, or cream so disposed of in bulk to retail establishments which, under the applicable health regulations, are permitted to receive milk, skim milk, or cream other than of Grade A quality for Class II uses, shall be classified as Class II milk if so used or disposed of: *And provided further* That the market administrator is allowed to verify such use or disposition in the retail establishment.

§ 903.44 *Computation of skim milk and butterfat in each class.* For each delivery period, the market administrator shall correct for mathematical and other obvious errors the delivery period reports submitted by each handler and compute the total pounds of skim milk and butterfat, respectively, in Class I milk and Class II milk for such handler.

§ 903.45 *Allocation of skim milk and butterfat classified.* (a) The pounds of skim milk remaining in each class after making the following computations for each handler for each delivery period shall be the pounds of skim milk in such class allocated to producer milk received by such handler during such delivery period.

(1) Subtract from the total pounds of skim milk in Class II milk the plant shrinkage of skim milk in producer milk classified as Class II milk pursuant to § 903.41 (b) (3),

(2) Subtract from the remaining pounds of skim milk in each class the pounds of skim milk received from pool plants of other handlers in a form other than milk, skim milk, or cream, according to its classification pursuant to § 903.41,

(3) Subtract from the pounds of skim milk remaining in Class II milk the remaining pounds of skim milk in other source milk which was not subject to the Class I pricing provisions of an order issued pursuant to the act: *Provided,* That if the pounds of skim milk to be subtracted is greater than the remaining pounds of skim milk in Class II, the balance shall be subtracted from the pounds of skim milk in Class I;

(4) Subtract from the pounds of skim milk remaining in Class II an amount equal to such remainder, or the product obtained by multiplying the pounds of skim milk in milk received from producers by 0.05, whichever is less;

(5) Subtract from the pounds of skim milk remaining in Class II the pounds of skim milk in other source milk which was subject to the Class I pricing provisions of another order issued pursuant to the act: *Provided,* That if the pounds of skim milk to be subtracted is greater than the remaining pounds of skim milk in Class II, the balance shall be subtracted from the pounds of skim milk in Class I;

(6) Subtract the pounds of skim milk in milk, skim milk, or cream received from pool plants of other handlers from the pounds of skim milk remaining in the class to which assigned, pursuant to § 903.43 (a),

(7) Add to the pounds of skim milk remaining in Class II milk the pounds of skim milk subtracted pursuant to subparagraphs (1) and (4) of this paragraph and if the pounds of skim milk remaining in all classes exceed the pounds of skim milk in milk received from producers, subtract such excess from the pounds of skim milk remaining in the various classes in series beginning with the lowest price class.

(b) Determine the pounds of butterfat in each class to be allocated to producer milk in the same manner prescribed for skim milk in paragraph (a) of this section.

§ 903.46 *Determination of producer milk in each class.* For each class, add the pounds of skim milk and the pounds of butterfat allocated to producer milk, pursuant to § 903.45, and determine the percentage of butterfat in each class.

MINIMUM PRICE

§ 903.50 *Basic formula price.* The basic formula price for each delivery period to be used in determining the class prices, set forth in § 903.51, shall be the higher of the prices computed pursuant to paragraphs (a) and (b) of this section, rounded to the nearest cent.

(a) Determine the arithmetic average of the basic, or field, prices paid or to be paid per hundredweight for milk of 3.5 percent butterfat content received from farmers during the delivery period at the following plants or places for which prices have been reported to the market

administrator or the Department of Agriculture:

Concern and Location

Borden Co., Mount Pleasant, Mich.
Borden Co., Black Creek, Wis.
Borden Co., Orfordville, Wis.
Borden Co., New London, Wis.
Carnation Co., Ava, Mo.
Carnation Co., Seymour, Mo.
Carnation Co., Sparta, Mich.
Carnation Co., Chilton, Wis.
Carnation Co., Berlin, Wis.
Carnation Co., Richland Center, Wis.
Carnation Co., Oconomowoc, Wis.
Indiana Condensed Milk Co., Bunker Hill, Ill.
Litchfield Creamery Co., Litchfield, Ill.
Pet Milk Co., Greenville, Ill.
Pet Milk Co., Hudson, Mich.
Pet Milk Co., Wayland, Mich.
Pet Milk Co., Coopersville, Mich.
Pet Milk Co., New Glarus, Wis.
Pet Milk Co., Belleville, Wis.
White House Milk Co., Manitowoc, Wis.
White House Milk Co., West Bend, Wis.

(b) The price per hundredweight computed as follows: Multiply by 3.5 the simple average as computed by the market administrator of the daily wholesale selling prices (using the midpoint of any price range as one price) of 92-score bulk creamery butter per pound at Chicago, as reported by the Department during the delivery period, add 20 percent thereof, and add or subtract, as the case may be, to such sum 3½ cents for each full half cent that the weighted average of carlot prices per pound for non-fat dry milk solids, spray and roller process, respectively, for human consumption f. o. b. manufacturing plants in the Chicago area, as published for the period from the 26th day of the immediately preceding delivery period through the 25th day of the current delivery period by the Department, is above or below 5½ cents: *Provided,* That if such f. o. b. manufacturing plant prices of non-fat dry milk solids are not reported there shall be used for the purpose of such computation the average of the carlot prices of non-fat dry milk solids, spray and roller process for human consumption, delivered at Chicago, as reported by the Department of Agriculture during the delivery periods; and in the latter event 7½ cents shall be used in lieu of the "5½ cents."

§ 903.51 *Class prices.* Subject to the provisions of §§ 903.52 and 903.53, each handler shall pay for milk received at his pool plant(s) from producers or received by him as a cooperative at not less than the following prices per hundredweight:

(a) *Class I milk.* The price for Class I milk shall be the basic formula price for the preceding delivery period plus or minus the following amounts:

(1) Add $1.45 for the delivery periods of August through January· $1.15 for the delivery periods of February, March, and July· and 75 cents for the delivery periods of April through June;

(2) If the utilization percentage calculated pursuant to subparagraph (3) of this paragraph exceeds 120 subtract, or if it is less than 120 add, an amount calculated by multiplying the difference between such percentage and 120 by the appropriate figure in the following schedule:

Delivery period group	Add (cents)	Subtract (cents)
February and March	2	3
April through June	0	3
July	2	3
August through January	3	3

(3) For each of the delivery period groups specified in subparagraph (2) of this paragraph, calculate a utilization percentage by dividing the total pounds of Class I milk (including the Class I milk in pool plants, except sales of non-Grade A milk outside the marketing area allocated to other source milk, plus the Class I milk sold in the marketing area from non-pool plants) for the 12-month period ending with the beginning of the month preceding each delivery period group, into the total pounds of producer milk during such 12-month period, multiplying by 100, and rounding the resultant figure to the nearest whole percentage point.

(b) *Class II milk.* For the months of August through February, the price for Class II milk shall be the basic formula price. For all other months, the Class II price shall be an amount computed as follows:

(1) Multiply by 4.24 the simple average, as computed by the market administrator, of the daily wholesale selling prices (using the midpoint of any price range as one price) of 93-score bulk creamery butter per pound at Chicago, as reported by the Department during the delivery period: *Provided,* That if no price is reported for 93–score butter, the highest of the prices reported for 92–score butter for that day shall be used in lieu thereof;

(2) Multiply by 8.2 the weighted average of carlot prices per pound for spray process non-fat dry milk solids, for human consumption, f. o. b. manufacturing plants in the Chicago area, as published for the period from the 26th day of the immediately preceding delivery period through the 25th day of the current delivery period by the Department; and

(3) From the sum of the results arrived at under subparagraphs (1) and (2) of this paragraph subtract 75 cents.

§ 903.52 *Location differentials to handlers.* (a) With respect to skim milk and butterfat contained in milk received from producers at a pool plant in Meramec or Bonhomme townships, St. Louis County, Missouri (except in the cities of Valley Park and Kirkwood) or outside the marketing area, which is classified as Class I milk, the price per hundredweight shall be reduced by the amounts set forth in the following schedule according to the airline distance from the plant where the milk is received from producers or the plant from which the milk is diverted to the City Hall in St. Louis:

Mileage	*Allowance (cents)*
Not more than 10 miles	6
More than 10 but not more than 20 miles	12
More than 20 but not more than 30 miles	14
More than 30 but not more than 40 miles	16
For each additional ten miles or fraction thereof an additional	1

Provided, That for purposes of calculating such location differential with respect to milk transferred between pool plants, the Class II milk remaining in the transferee-plant after the subtraction pursuant to § 903.45 (a) (5) and (b) shall be assigned to approved milk from other plants in sequence according to the location differential applicable at each plant beginning with the plant having the largest differential and then to producer milk.

§ 903.53 *Butterfat differentials to handlers.* If the average butterfat test of Class I milk or Class II milk, as calculated pursuant to § 903.46, is more or less than 3.5 percent, there shall be added to, or subtracted from, as the case may be, the price for such class of utilization, for each one-tenth of 1 percent that such average butterfat test is above or below 3.5 percent, a butterfat differential calculated for each class of utilization as follows:

(a) *Class I milk.* Multiply by 0.120 the average of the daily wholesale prices (using the midpoint of any price range as one price) of 92-score bulk creamery butter per pound at Chicago, as reported by the Department of Agriculture during the previous delivery period, and round to the nearest one-tenth cent.

(b) *Class II milk.* Multiply by 0.115 the average of the daily wholesale prices (using the midpoint of any price range as one price) of 92-score bulk creamery butter per pound at Chicago, as reported by the Department of Agriculture during the delivery period, and round to the nearest one-tenth cent.

APPLICATION OF PROVISIONS

§ 903.60 *Producer-handlers.* Sections 903.40 through 903.46, 903.50 through 903.53, 903.70, 903.71, and 903.80 through 903.88 shall not apply to a producer-handler.

§ 903.61 *Plants subject to other Federal orders.* In the case of any plant which the Secretary determines disposes of a greater portion of its milk as Class I milk on retail or wholesale routes (including plant stores) in another marketing area regulated by another order or marketing agreement issued pursuant to the act than is disposed of as Class I milk on retail or wholesale routes (including plant stores) in the St. Louis marketing area the provisions of this order shall not apply except as follows: The operator of such plant shall, with respect to the total receipts and utilization of skim milk and butterfat, at the plant make reports to the market administrator at such time and in such manner as the market administrator may require, and allow verification of such reports by the market administrator.

§ 903.62 *Handlers operating non-pool plants.* None of the provisions from §§ 903.43 through 903.53 inclusive, or from §§ 903.70 through 903.85 inclusive, shall apply in the case of a handler in his capacity as the operator of a non-pool plant, except that such handler shall, on or before the 15th day after the end of each delivery period, pay to the market administrator for deposit into the producer-settlement fund an amount calcu-

lated by multiplying the total hundredweight of butterfat and skim milk disposed of as Class I milk from such plant to retail or wholesale outlets (including plant stores) in the marketing area during the delivery period, by the price arrived at by subtracting from the Class I price adjusted by the Class I butterfat and location differentials;

(a) For the months of March through July the Class II price adjusted by the Class II butterfat differential; or

(b) For the months of August through February the uniform price adjusted by the Class I location differential and by a butterfat differential calculated by multiplying the total volume of producer butterfat in each class during the month by the butterfat differential for each class, dividing the resultant figure by the total butterfat in producer milk and rounding the resultant figure to the nearest one-tenth cent.

DETERMINATION OF UNIFORM PRICE TO PRODUCERS

§ 903.70 *Computation of the value of milk for each handler* For each delivery period the market administrator shall compute the value of milk for each handler as follows:

(a) Multiply the quantity of producer milk in each class computed pursuant to § 903.46 by the applicable class price, and add together the resulting amounts;

(b) Add an amount computed as follows: Multiply the hundredweight of skim milk and butterfat subtracted from Class I milk pursuant to § 903.45 (a) (3) and (b) (less, in the case of a plant permitted to receive and bottle non-Grade A milk, the hundredweight of non-grade A skim milk and butterfat, respectively, received at the plant and sold in non-Grade A Class I products outside the marketing area) by the price arrived at by subtracting from the Class I price adjusted by the Class I butterfat differential and the Class I location differential at the nearest plant(s) from which an equivalent amount of other source milk was received:

(1) For the months of March through July, the Class II price adjusted by the Class II butterfat differential; or

(2) For the months of August through February the uniform price adjusted by the Class I location differential and by a butterfat differential calculated by multiplying the total volume of producer butterfat in each class during the month by the butterfat differential for each class, dividing the resultant figure by the total butterfat in producer milk and rounding the resultant figure to the nearest one-tenth cent.

(c) Add the amounts computed by multiplying the pounds of overage deducted from each class pursuant to § 903.45 (a) (7) and (b) by the applicable class price.

§ 903.71 *Computation of the uniform price.* For each delivery period the market administrator shall compute the uniform price per hundredweight of milk of 3.5 percent butterfat content, f. o. b. marketing area, received from producers as follows:

(a) Combine into one total the values computed pursuant to § 903.70 for all handlers who made the reports prescribed in § 903.30 and who are not in default of payments pursuant to § 903.84 for the preceding delivery period;

(b) Add an amount equivalent to the total deductions made pursuant to § 903.82;

(c) Subtract if the weighted average butterfat content of milk received from producers is more than 3.5 percent, or add if such average butterfat content is less than 3.5 percent, an amount computed by multiplying the producer butterfat differential by the difference between 3.5 and the average butterfat content of producer milk and multiplying the resulting figure by the total hundredweight of such milk;

(d) Add an amount equivalent to one-half of the unobligated balance in the producer-settlement fund;

(e) Divide the resulting amount by the total hundredweight of milk received from producers; and

(f) Subtract not less than 4 cents nor more than 5 cents from the amount computed pursuant to paragraph (e) of this section. The resulting figure shall be the uniform price per hundredweight of milk testing 3.5 percent butterfat, f. o. b. the marketing area.

PAYMENTS

§ 903.80 *Payments to producers.* On or before the 15th day after the end of each delivery period, each handler shall make payment to each producer, for the total value of milk received from such producer during such delivery period, at not less than the uniform price per hundredweight computed pursuant to § 903.71, subject to the butterfat and location differentials computed pursuant to §§ 903.81 and 903.82: *Provided,* That if by such date such handler has not received full payment pursuant to § 903.85 from the market administrator for such delivery period, he may reduce pro rata his payments to producers by not more than the amount of such underpayment. Payments to producers shall be completed thereafter not later than the date for making payments pursuant to this paragraph next following after the receipt of the balance due from the market administrator.

§ 903.81 *Butterfat differential to producers.* In making payments to each producer pursuant to § 903.80, a handler shall adjust the uniform price by adding or subtracting, as the case may be, for each one-tenth of one percent by which the average butterfat content of such producers milk is more or less than 3.5 percent, an amount equal to the butterfat differential computed pursuant to § 903.53 (b) *Provided,* That such differential shall be rounded to the nearest one-half cent.

§ 903.82 *Location differentials to producers.* In making payments to producers pursuant to § 903.80, the price per hundredweight for milk received at plants located in Meramec or Bonhomme townships, St. Louis County, Missouri (except in the cities of Valley Park or Kirkwood) or outside the marketing area, shall be reduced by the amounts set forth in the following schedule according to the airline distance from the plant where the milk is received from producers or the plant from which the milk is diverted to the City Hall in St. Louis:

Mileage zone	Allowance (cents)
Not more than 10 miles	6
More than 10 but not more than 20 miles	12
More than 20 but not more than 30 miles	14
More than 30 but not more than 40 miles	16
For each additional ten miles or fraction thereof an additional	1

§ 903.83 *Producer-settlement fund.* The market administrator shall establish and maintain a separate fund to be known as the "Producer-settlement Fund," into which he shall deposit all payments made by handlers pursuant to §§ 903.62, 903.84, and 903.86, and out of which he shall make payments due handlers pursuant to §§ 903.85 and 903.86.

§ 903.84 *Payments to the producer-settlement fund.* On or before the 13th day after the end of each delivery period, each handler shall pay to the market administrator the amount by which the value of milk for such handler, pursuant to § 903.70, exceeds the obligations of such handler to producers, pursuant to § 903.80: *Provided,* That to this amount shall be added one-half of one percent of any amount due the market administrator pursuant to this section for each month or any portion thereof that such payment is overdue.

§ 903.85 *Payments out of the producer-settlement fund.* On or before the 14th day after the end of each delivery period the market administrator shall pay to each handler the amount by which the obligation of such handler to producers, pursuant to § 903.80, exceeds the value of milk for such handler calculated pursuant to § 903.70, less any unpaid balances due the market administrator from such handler pursuant to §§ 903.84, 903.86, 903.87, or 903.88: *Provided,* That if the unobligated balance in the producer-settlement fund is insufficient to make full payment to all handlers entitled to payment pursuant to this paragraph, the market administrator shall reduce such payments at a uniform rate and shall complete such payments as soon as the appropriate funds are available.

§ 903.86 *Adjustment of accounts.* Whenever audit by the market administrator of any handler's reports, books, records, or accounts discloses that money is due (a) the market administrator from such handler, (b) such handler from the market administrator, or (c) any producer or cooperative association from such handler, the market administrator shall make payments to such handler of any amounts due the handler, or shall notify the handler of any amount due the market administrator or producers or cooperative associations, and such payments shall be made on or before the next date for making payments as set forth in the provisions relating to the payments which were in error.

§ 903.87 *Expense of administration.* As his pro rata share of the expense of

the administration of this subpart, each handler shall pay to the market administrator on or before the 15th day after the end of each delivery period for such delivery period 2½ cents or such lesser amount as the Secretary may prescribe for each hundredweight of milk (a) received from producers, (b) received at a pool plant as Grade A other source milk and allocated to Class I, or (c) distributed as Class I milk in the marketing area from a non-pool plant.

§ 903.88 *Marketing services*—(a) *Deduction of marketing services.* Except as set forth in paragraph (b) of this section, each handler in making payments to producers, pursuant to § 903.80, shall deduct 5 cents per hundredweight, or such lesser amount as the Secretary may prescribe, with respect to all milk received by such handler from producers (excluding such handler's own production) during the delivery period and shall pay such deductions to the market administrator on or before the 15th day after the end of such delivery period. Such moneys shall be used by the market administrator to verify weights, samples, and tests of milk received from such producers and to provide them with market information. Such services shall be performed in whole or in part by the market administrator or by an agent engaged by and responsible to him.

(b) *Producers' cooperative associations.* In the case of producers for whom a cooperative association which the Secretary determines to be qualified under the requirements of the act of Congress of February 18, 1922, as amended, known as the "Capper-Volstead Act," is actually performing the services set forth in paragraph (a) of this section, each handler, in lieu of the deductions specified in paragraph (a) of this section, shall make the deductions from the payments made pursuant to § 903.80, which are authorized by such producers, and, on or before the 15th day after the end of each delivery period, pay over such deductions to the cooperative associations rendering such services of which such producers are members.

EFFECTIVE TIME, SUSPENSION, AND TERMINATION

§ 903.90 *Effective time.* The provisions of this subpart, or any amendment to this subpart, shall become effective at such time as the Secretary may declare and shall continue in force until suspended or terminated pursuant to § 903.91.

§ 903.91 *Suspension and termination.* Any or all provisions of this subpart, or any amendment to this subpart shall be suspended or terminated as to any or all handlers after such reasonable notice as the Secretary may give, and shall, in any event, terminate whenever the provisions of the act authorizing it cease to be in effect.

§ 903.92 *Continuing power and duty.* (a) If, upon the suspension or termination pursuant to § 903.91, there are any obligations arising under this subpart the final accrual or ascertainment of which requires further acts by any handler, by the market administrator, or by any other person, the power and duty to perform such further acts shall continue notwithstanding such suspension or termination: *Provided,* That any such acts required to be performed by the market administrator, shall, if the Secretary so directs, be performed by such other person, persons or agency as the Secretary may designate.

(b) The market administrator, or such other person as the Secretary may designate shall (1) continue in such capacity until discharged, (2) from time to time account for all receipts and disbursements and deliver all funds or property on hand, together with the books and records of the market administrator, or such person, to such person as the Secretary shall direct, and (3) if so directed by the Secretary, execute such assignments or other instruments necessary or appropriate to vest in such person full title to all funds, property, and claims vested in the market administrator or such person pursuant to this subpart.

§ 903.93 *Liquidation after suspension or termination.* Upon the suspension or termination pursuant to § 903.91, the market administrator, or such person as the Secretary may designate, shall, if so directed by the Secretary, liquidate the business of the market administrator's office and dispose of all funds and property then in his possession or under his control, together with claims for any funds which are unpaid and owing at the time of such suspension or termination. Any funds collected pursuant to the provisions of this subpart, over and above the amounts necessary to meet outstanding obligations and the expenses necessarily incurred by the market administrator or such person in liquidating and distributing such funds, shall be distributed to the contributing handlers and producers in an equitable manner.

MISCELLANEOUS PROVISIONS

§ 903.100 *Unfair methods of competition.* Each handler shall refrain from acts which constitute unfair methods of competition by way of indulging in any practices with respect to the transportation of milk for, and the supplying of goods and services to producers from whom milk is received, which tend to defeat the purpose and intent of the terms and provisions of this subpart.

§ 903.101 *Separability of provisions.* If any provision of this subpart, or its application to any person or circumstance is held invalid, the application of such provision, and of the remaining provisions of this subpart, to other persons or circumstances shall not be affected thereby.

§ 903.102 *Agents.* The Secretary may, by designation in writing, name any officer or employee of the United States to act as his agent or representative in connection with any of the provisions of this subpart.

§ 903.103 *Termination of obligations.* The provisions of this section shall apply to any obligation under this subpart for the payment of money irrespective of when such obligations arose.

(a) The obligation of any handler to pay money required to be paid under the terms of this subpart shall, except as provided in paragraphs (b) and (c) of this section, terminate two years after the last day of the calendar month during which the market administrator receives the handler's utilization report on the milk involved in such obligation unless within such two-year period the market administrator notifies the handler in writing that such money is due and payable. Service of such notice shall be complete upon mailing to the handler's last known address, and it shall contain, but need not be limited to, the following information.

(1) The amount of the obligation;

(2) The month(s) during which the milk, with respect to which the obligation exists, was received or handled; and

(3) If the obligation is payable to one or more producers or to an association of producers, the name of such producer(s) or association of producers, or if the obligation is payable to the market administrator, the amount for which it is to be paid.

(b) If a handler fails or refuses, with respect to any obligation under this subpart, to make available to the market administrator or his representatives all books and records required by this subpart to be made available, the market administrator may, within the two-year period provided for in paragraph (a) of this section, notify the handler in writing of such failure or refusal. If the market administrator so notifies a handler, the said two-year period with respect to such obligation shall not begin to run until the first day of the calendar month following the month during which all such books and records pertaining to such obligation are made available to the market administrator or his representatives.

(c) Notwithstanding the provisions of paragraphs (a) and (b) of this section, a handler's obligation under this subpart to pay money shall not be terminated with respect to any transaction involving fraud or willful concealment of a fact, material to the obligation, on the part of the handler against whom the obligation is sought to be imposed.

(d) Any obligation on the part of the market administrator to pay a handler any money which such handler claims to be due him under the terms of this subpart shall terminate two years after the end of the calendar month during which the milk involved in the claim was received if an underpayment is claimed, or two years after the end of the calendar month during which the payment (including deduction or set-off by the market administrator) was made by the handler if a refund on such payment is claimed, unless such handler, within the applicable period of time, files, pursuant to section 8c (15) (A) of the act, a petition claiming such money.

Issued at Washington, D. C., this 27th day of July 1953, to be effective on and after August 1, 1953.

[SEAL] TRUE D. MORSE,
Acting Secretary of Agriculture.

[F. R. Doc. 53-6689; Filed, July 29, 1953; 8:54 a. m.]

Chapter XI—Agricultural Conservation Program, Department of Agriculture

[1061 (Special Program 53)-1, Supp. 2]

PART 1107—FARM LAND RESTORATION

SUBPART—1953

MISCELLANEOUS AMENDMENTS

Pursuant to the authority vested in the Secretary of Agriculture under sections 7-17 of the Soil Conservation and Domestic Allotment Act, as amended, and Public Law 371, 82d Congress, the 1953 Farm Land Restoration Program, issued June 6, 1952 (17 F R. 5306) as amended January 30, 1953 (18 F R. 711), is further amended as follows:

1. Section 1107.204 is amended by inserting the following as the fourth and fifth sentences:

§ 1107.204 *Eligible restoration practices.* * * * Approved practices will be deemed to have been carried out during the program year if started after the beginning of the program year and the county committee determines that they are substantially completed by the end of the program year. However, no practice will be eligible for assistance until it has been completed in accordance with all applicable specifications and program provisions. * * *

2. Section 1107.206 is amended by inserting the following as the second sentence:

§ 1107.206 *Prior approval.* * * * However, for counties designated after January 1, 1953, retroactive approval may be given for practices started by August 1, 1953, or by a date 30 days after such designation, whichever is the later.

3. Section 1107.250 is amended by adding paragraph "(k)" as follows:

§ 1107.250 *Definitions.* * * *

(k) "County" means parish or county.

4. Section 1107.253 (a) is amended by inserting the following between "Kansas" and "Minnesota":

§ 1107.253 *Applicability.* (a) * * *

Louisiana. Acadia, Avoyelles, Bossier, Caddo, Calcasieu, Caldwell, Cameron, Catahoula, Concordia, Evangeline, Franklin, Grant, Iberia, Jefferson Davis, La Salle, Livingston, Natchitoches, Pointe Coupee, Rapides, Red River, Richland, St. Landry, St. Martin, Tensas, Vermilion.

(Sec. 4, 49 Stat. 164; 16 U. S. C. 590d. Interpret or apply secs. 7-17, 49 Stat. 1148, as amended; 16 U. S. C. 590g-590q)

Done at Washington, D. C., this 25th day of July 1953.

[SEAL] E. T. BENSON,
Secretary of Agriculture.

[F. R. Doc. 53-6684; Filed, July 29, 1953; 8:52 a. m.]

TITLE 9—ANIMALS AND ANIMAL PRODUCTS

Chapter I—Bureau of Animal Industry, Department of Agriculture

Subchapter C—Interstate Transportation of Animals and Poultry

[B. A. I. Order 383, Revised, Amdt. 2]

PART 76—HOG CHOLERA, SWINE PLAGUE, AND OTHER COMMUNICABLE SWINE DISEASES

SUBPART B—VESICULAR EXANTHEMA

DESIGNATION OF AREAS IN WHICH SWINE ARE AFFECTED WITH VESICULAR EXANTHEMA

Pursuant to the authority conferred upon the Administrator of the Agricultural Research Administration by § 76.27 of Subpart B, as amended, Part 76, Title 9, Code of Federal Regulations (18 F. R. 3637) § 76.27a of said Subpart B (18 F. R. 3829, as amended) is hereby amended to read as follows:

§ 76.27a *Designation of areas in which swine are affected with vesicular exanthema.* The following areas are hereby designated as areas in which swine are affected with vesicular exanthema.

The State of California;

The Town of Manchester, in Hartford County, in Connecticut;

Androscoggin, Cumberland, Kennebec, Somerset, and York Counties, in Maine;

That area consisting of Hempden, Worcester, Middlesex, Essex, Suffolk, Norfolk, Bristol and Plymouth Counties, in Massachusetts;

Brownstown and Huron Townships in Wayne County, and Paris Township in Kent County, in Michigan;

Bergen, Hudson, Hunterdon and Morris Counties and that area consisting of Union, Middlesex, Monmouth, Ocean, Burlington, Camden, Gloucester, Atlantic, and Cape May Counties, in New Jersey;

Poughkeepsie Township, in Dutchess County, and that area in Clarkstown Township lying north of New York State Route No. 59, in Rockland County, in New York;

Bucks and Delaware Counties, in Pennsylvania;

That area in Atascosa County lying west of State Highway No. 346 and north of State Highway No. 173; that area in Bell County lying north of U. S. Highway No. 190 and west of State Highways No. 36 and 317; that area in Bexar County lying south of Highway Loop 13 (South-west Military Drive) and between U. S. Highways No. 281 and No. 81; that area in Dallas County lying south of State Highway No. 183 and west of the City of Dallas and U. S. Highway No. 67; and that area in Wichita County lying south of U. S. Highway No. 287 and east of U. S. Highway No. 281, in Texas;

Sections 31-32, Township 4 North, Range One West, in Davis County, in Utah.

Effective date. The foregoing amendment shall become effective upon issuance.

Section 76.27 of Subpart B, as amended, Part 76, Title 9, Code of Federal Regulations (18 F. R. 3637), quarantines the areas so designated.

The amendment designates the following as areas in which swine are affected with vesicular exanthema in addition to the areas heretofore designated:

Brownstown and Huron Townships in Wayne County, and Paris Township in Kent County, in Michigan;

That area in Bell County lying north of U. S. Highway No. 190 and west of State Highways No. 36 and No. 317; and that area in Wichita County lying south of U. S. Highway No. 287 and east of U. S. Highway No. 281, in Texas.

Hereafter, the restrictions pertaining to the interstate movement of swine and carcasses, parts and offal of swine from or through quarantined areas contained in 9 CFR, Part 76, Subpart B, as amended (18 F. R. 3636 et seq.), apply to these areas.

The amendment excludes from the areas heretofore designated as areas in which swine are affected with vesicular exanthema:

Township 3, Range 23, in Dale County, in Alabama;

Council Grove, Mustang, Oklahoma and Greeley Townships, in Oklahoma County, in Oklahoma;

Henderson County, in Texas.

The Administrator of the Agricultural Research Administration has determined that swine in these areas are no longer affected with the disease, and that the quarantine of such areas is no longer required to prevent the dissemination thereof. Accordingly, these areas are no longer quarantined under said § 76.27, and the restrictions pertaining to the interstate movement of swine and carcasses, parts and offal of swine from or through quarantined areas contained in 9 CFR, Part 76, Subpart B, as amended (18 F R. 3636 et seq.) no longer apply to such areas. However, the restrictions pertaining to such movement from nonquarantined areas contained in said Subpart B apply thereto.

The effect of the amendment is to impose certain further restrictions necessary to prevent the spread of vesicular exanthema, a contagious, infectious, and communicable disease of swine, and to relieve certain restrictions presently imposed. The amendment must be made effective immediately to accomplish its purpose in the public interest and to be of maximum benefit to persons subject to the restrictions which are relieved. Accordingly, under section 4 of the Administrative Procedure Act (5 U. S. C. 1003), it is found upon good cause that notice and other public procedure with respect to the amendment are impracticable and contrary to the public interest and good cause is found for making it effective less than 30 days after publication in the FEDERAL REGISTER.

(Secs. 4, 5, 23 Stat. 32, as amended, sec. 2, 32 Stat. 792, as amended, secs. 1, 3, 33 Stat. 1264, as amended, 1265, as amended; 21 U. S. C. 120, 111, 123, 125. Interprets or applies sec. 7, 23 Stat. 32, as amended; 21 U. S. C. 117)

Done at Washington, D. C., this 24th day of July 1953.

[SEAL] B. T. SHAW,
Administrator, Agricultural Research Administration.

[F. R. Doc. 53-6673; Filed, July 29, 1953; 8:49 a. m.]

TITLE 15—COMMERCE AND FOREIGN TRADE

Chapter III—Bureau of Foreign and Domestic Commerce, Department of Commerce

Subchapter C—Office of International Trade

[6th Gen. Rev. of Export Regs., Amdt. 57 [1]]

PART 372—PROVISIONS FOR INDIVIDUAL AND OTHER VALIDATED LICENSES

PART 373—LICENSING POLICIES AND RELATED SPECIAL PROVISIONS

PART 374—PROJECT LICENSES

PART 377—TIME LIMIT (TL) LICENSE

PART 379—EXPORT CLEARANCE

PART 380—AMENDMENTS, EXTENSIONS, TRANSFERS

MISCELLANEOUS AMENDMENTS

1. In § 372.1 *Applicability and general provisions* the note following paragraph (b) *Applicability of provisions* is amended by the addition of a new item to read as follows:

4. *Time Limit license.* The Time Limit (TL) license authorizes the exportation of an unlimited quantity of specified commodities to an ultimate consignee located in a Group O country. Provision is also made for reexportation by the foreign consignee to approved importers in Country Group O. (See Part 377 of this subchapter.)

2. § 372.14 *Reexportation from country of destination* paragraph (a) *General provisions* is amended to read as follows:

(a) *General provisions.* (1) No exportation may be made under any validated license with the knowledge or intention that the commodities so exported are to be reexported from the country stated on the license application as the country of ultimate destination, unless the reexportation has been specifically authorized by the Department of Commerce, except as provided in paragraphs (b) and (c) of this section.

(2) Except under the Time Limit (TL) license (see Part 377 of this subchapter) if it is stated in a consignee's statement or on an export license application that the commodity or commodities to be exported are intended for distribution or resale in a country or countries other than the named country of ultimate destination, the validated license will specifically name the country or countries to which distribution or resale is authorized. Authorization will be granted or withheld by an appropriate statement on the face of the license, as follows:

(a) "Distribution or resale of the commodities listed above is permitted in the country of ultimate destination only"; or

(b) "Distribution or resale of the commodities listed above is permitted in (name of country of destination), and (names of other approved countries)."

3. In Part 373 *Licensing policies and related special provisions* footnote 6 referring to the heading "Subpart D—Destination Provisions" is amended to read as follows:

[6] These provisions generally apply to exportations of all commodities to certain destinations. Other special destination provisions relating to particular commodities are set forth in the individual commodity groups in which such commodities are classified (§§ 373.11 to 373.64). See §§ 373.01 and 373.02.

4. Section 373.65 *Country Group R destinations* is amended in the following particulars:

a. The title of the section is amended to read as follows: "§ 373.65 *Ultimate consignee and purchaser statements.*"

b. In paragraph (a) *Scope,* subparagraph (1) *General* the first sentence is amended to read as follows: "The provisions of this section apply to all proposed shipments for which validated export licenses are required where the country of ultimate destination is a country in Group R, and to proposed shipments to a country in Group O under the provisions of the Time Limit (TL) license (see Part 377 of this subchapter)

c. In paragraph (a) *Scope,* subparagraph (2) *Single-transaction statement from ultimate consignee,* footnote 7 referring to the second sentence of the subparagraph is amended to read as follows:

[7] Forms IT-842 and IT-843 may be obtained at all Department of Commerce Field Offices and from the Office of International Trade, Department of Commerce, Washington 25, D. C. Foreign importers may obtain copies of Forms IT-842 and IT-843 from their United States exporters or from United States Diplomatic and Consular Offices in Group R countries.

d. In paragraph (a) *Scope* subparagraph (3) *Multiple-transaction statement from ultimate consignee* the first sentence is amended to read as follows: "Exporters who have a continuing and regular relationship with an ultimate consignee (including but not limited to applicants having foreign branches or subsidiaries or distributors under franchise with the applicant) involving recurring orders for the same commodities to the same destinations and for the same end uses, and applicants for Time Limit (TL) licenses (see Part 377 of this subchapter) may submit to the Office of International Trade the original or a copy of a multiple-transaction statement, executed on Form IT-843 [7] and signed by a responsible official of the ultimate consignee."

e. In paragraph (a) *Scope,* Note 5. *Distribution or resale* following subparagraph (8) *30-day grace period for Positive List additions* is amended to read as follows:

5. *Distribution or resale.* Except under the Time Limit (TL) license, if it is stated in a consignee's statement or on an export license application that the commodity or commodities to be exported are intended for distribution or resale in a country or countries other than the named country of ultimate destination, the validated license will specifically name the country or countries to which distribution or resale is authorized.

f. Item 3 of Explanatory Statement and Interpretations following § 373.65 is amended to read as follows:

3. Q. To what cases does this requirement apply?

A. The statement is required in connection with applications for validated licenses to ship commodities to Group R destinations (except project licenses, for which such information is already required). In addition, the multiple-transaction statement is required for applications for Time Limit (TL) licenses (see Part 377 of this subchapter).

5. Section 374.1 *Project licenses* paragraph (c) *Application for other validated licenses* is amended to read as follows:

(c) *Application for other validated licenses.* An exporter holding a project license (SP or DL License) shall not apply for, nor will the Office of International Trade issue to him, an individual or any other type of validated license for a transaction involving a project whose requirements are covered by his outstanding SP or DL license, except where the shipment is to be made by mail under the provisions of § 374.4.

The note following paragraph (c) remains unchanged.

6. A new Part 377, *Time Limit (TL) License,* is added to read as follows:

Sec.
377.1 Time Limit (TL) license.
377.2 Commodities subject to TL license.
377.3 Consideration of applications.
377.4 Reexportation.
377.5 Application requirements.
377.6 Issuance of licenses.
377.7 Export clearance.
377.8 Use of other licensing procedures.
377.9 Amendment of license.
377.10 Effect of other provisions.

AUTHORITY: §§ 377.1 to 377.10 issued under sec. 3, 63 Stat. 7, as amended; 50 U. S. C. App. Sup. 2023, E. O. 9630, Sept. 27, 1945, 10 F. R. 12245; 3 CFR, 1945 Supp., E. O. 9919, Jan. 3, 1948, 13 F. R. 59; 3 CFR, 1948 Supp.

§ 377.1 *Time limit (TL) license.* Under the provisions of this part there is hereby established an alternative procedure for the exportation of certain specified commodities to Country Group O destinations (listed in § 371.3 of this subchapter) Pursuant to this procedure, application may be made for a Time Limit (TL) license which, if issued, authorizes exportations in unlimited quantities of the licensed commodity or commodities to a consignee in a Country Group O destination, for a period of one year from issuance of the license. Reexportation by the foreign consignee to importers in Group O countries may also be effected in accordance with the provisions of § 377.4.

§ 377.2 *Commodities subject to TL license.* The commodities which may be exported under this procedure are all RO commodities on the Positive List of Commodities (§ 399.1 of this subchapter) except those identified by the letter "B" in the column headed "Commodity Lists."

§ 377.3 *Consideration of applications*—(a) *End use.* Applications for Time Limit (TL) licenses will be considered for approval when the commodities proposed to be exported are intended for consumption or resale within the particular country of ultimate destination or for reexportation by the foreign consignee to another Group O country.

[1] This amendment was published in Current Export Bulletin No. 709, dated July 23, 1953, and in the reprint pages, dated July 23, 1953.

However, reexportation may not be effected until such time as approval is received from the Office of International Trade in accordance with § 377.4.

(b) *Applicant-consignee relationship.* An applicant for a Time Limit (TL) license must have an established business relationship with the ultimate consignee named on the application for a period of two years immediately preceding the date of filing the application, and must have exported the commodities covered by the application to the ultimate consignee in an amount totaling at least $2,000 during these two years, part of which was exported during each of the two years. For example, if the application is filed on September 10, 1953, this relationship must have existed during the years September 10, 1952, through September 9, 1953, and September 10, 1951, through September 9, 1952. In addition, an applicant for a Time Limit (TL) license shall have in his possession, at the time the application is filed, documentary evidence of the existence of the prescribed relationship with each ultimate consignee. The documents or records shall be retained by the applicant for three years from the date of receipt of the application, as shown on the acknowledgment card, Form IT–116, and shall be kept available for inspection, upon demand, by the Office of International Trade.

(c) *Orders.* An applicant for a Time Limit (TL) license is not required to hold an export order from the foreign consignee or purchaser for the commodities subject to this procedure. The requirements of §§ 372.1 (e) and 373.1 (b) of this subchapter are, therefore, inapplicable with respect to Time Limit (TL) licenses.

§ 377.4 *Reexportation.* (a) Reexportation may be made between ultimate consignees named on outstanding Time Limit (TL) licenses, issued to the same licensee, without the necessity of obtaining specific approval from the Office of International Trade. Approval for reexportation to other importers in Country Group O may be obtained in accordance with the procedure described in paragraph (b) of this section.

(b) Requests for reexportation approval may be made either with the license application or subsequent to the issuance of the license. In order to obtain such approval, a letter, in duplicate, signed by both the United States exporter and the foreign consignee named on the license application, shall be addressed to the Office of International Trade. The letter shall include (1) the names and addresses of the United States exporter, foreign consignee, and person or firm to whom the foreign consignee proposes to reexport the commodities described on the license application or export license; (2) OIT case number; (3) export license number, if known; and (4) processing code. Approval or denial of the request will be made by letter from the Office of International Trade addressed to the United States exporter. Reexportation requests, if approved, will be continuing until rescinded by the Office of International Trade.

§ 377.5 *Application requirements*—(a) *Application form.* An application for a Time Limit (TL) license shall be submitted on Form IT–419, with acknowledgment card (Form IT–116) attached. In preparing an application (Form IT–419) the applicant shall (1) enter the words "Time Limit License" across the top of Form IT–419, immediately above the printed words "United States of America," and (2) leave blank the items entitled "Quantity to be Shipped," "Unit Price," "Total Price," and the information with respect to the supplier and availability of the commodities for export. Related commodities may be grouped on a single application in accordance with the provisions of § 372.2 (c) of this subchapter.

(b) *Certification of applicant-consignee relationship.* Each application for a license under this procedure shall include the following certification signed by the applicant:

> This is to certify that (I) (we) have had a business relationship with (name of ultimate consignee) extending over a period of two years preceding the date of submission of this applicaton and have exported to the named consignee the commodities applied for under this application in an amount totaling at least $2,000 during these two years, part of which was exported during each of the two years.

(c) *Multiple transaction statement.* Each application for a Time Limit (TL) license shall be supported by a multiple-transaction statement, Form IT–843,[1] completed by the foreign consignee in accordance with the provisions of § 373.65 (a) (3) of this subchapter, except that quantities to be ordered need not be shown on the form.

§ 377.6 *Issuance of licenses* — (a) *Form of issuance.* Time Limit (TL) licenses will be issued on Form IT–628 (export license), and will bear the identifying words "Time Limit License" below the validation stamp.

(b) *Validity period.* The validity period will be a period of one year from issuance of the license and the expiration date will be indicated on the license form. Where the commodity covered by the license is subsequently removed from this procedure by the addition of the symbol "B" to the listing of the commodity on the Positive List (§ 399.1 of this subchapter), the validity period of the license covering such commodity shall automatically terminate on the effective date of such addition of this symbol. Ordinarily the addition of the symbol "B" to a commodity listing shall become effective 30 days after such announcement.

§ 377.7 *Export clearance*—(a) *Presentation of license to customs.* (1) The Time Limit license shall be deposited with the collector of customs at the port of exit through which the greater portion of shipments thereunder will move.

(2) Upon request of the licensee, collectors may authorize movement of the commodity from another port in accordance with the procedure established in § 379.1 (a) (4) of this subchapter. As an alternative, the applicant may obtain an additional license for deposit with the collector of customs at each additional port of exit through which substantial shipments will move. Under the alternative procedure, the applicant shall indicate on the license application the ports of exit through which substantial shipments will move. If, subsequent to issuance of the license, additional licenses are required under the alternative procedure, the licensee may make such request by letter to the Office of International Trade indicating the OIT case number, name of ultimate consignee, and ports through which substantial shipments will move.

(b) *Shipments by mail.* Shipments may be made by mail, without the necessity of obtaining additional licenses to effect such shipments, in accordance with the procedure described in § 379.1 (f) (1) (iii) of this subchapter.

§ 377.8 *Use of other licensing procedures.* The filing of an application for a Time Limit (TL) license, or the granting of such license, shall not limit the applicant's filing for or use of an individual, Blanket (BLT) or periodic requirements (PRL) license. Neither shall the filing for or use of an individual, Blanket (BLT) or periodic requirements (PRL) license limit the applicant as to the filing for, or use of, a license under the Time Limit (TL) procedure. Where more than one licensing procedure is used covering the same consignee and the some commodity, the reason or reasons for such duplication shall be entered on the application.

§ 377.9 *Amendment of license.* Amendments of the Time Limit (TL) license involving extension of the validity period will not be granted. In order to assure the continuity of an outstanding license, exporters may submit an additional application for a Time Limit (TL) license, covering the same consignee and commodity(ies), 30 days prior to the expiration date of the outstanding license. Where special circumstances exist (for example, lead time in long-cycle production commodities), an additional license application may be submitted 90 days prior to the expiration date of the outstanding license, provided that the reason or reasons for such early submission are included with the application.

§ 377.10 *Effect of other provisions.* Insofar as consistent with the provisions of this part, all of the provisions of Parts 370 to 399, inclusive, of this subchapter shall apply equally to applications for and licenses issued under this part.

7. Part 379 *Export clearance* is amended by the addition of a new section (§ 379.4) to read as follows:

§ 379.4 *Customs examination*—(a) *Examination.* All commodities and technical data declared for export are subject to examination by customs officials for the purpose of verifying the commodity or technical data specified in the shipper's export declaration, and the value and quantity thereof, as well as

[1] Forms IT–843 may be obtained from Department of Commerce field offices or from the Office of International Trade, Washington 25, D. C.

to assure observance of Parts 370 to 399 of this subchapter. The examination may be made in connection with commodities or technical data exported under a general license as well as a validated license. It also may be made in connection with exportations to Canada. This examination is not limited to, but may take the form of, commodity identification, technical appraisal (analysis) or both.

(b) *Place of examination.* Examination of exportations shall be made at the place of lading or where the customs officials are stationed for that purpose.

(c) *Technical identification.* In those cases where, in the judgment of the collector of customs, the commodity or technical data cannot be properly identified, a sample may be taken for more detailed examination by customs appraisers or for chemical or other laboratory analysis. The shipment will not be delayed after sampling for completion of the analysis.

(d) *Sampling for technical identification*—(1) *Obtaining samples.* When sampling is required, the sample will be obtained by the customs official in accordance with the provisions for sampling imported merchandise. The size of the sample taken shall be the minimum representative amount necessary for identification or analysis and will depend on such factors as the physical condition of the material (whether solid, liquid, or gas) and the size and shape of the container.

(2) *Notification of sampling to exporter and consignee.* The exporter (or his agent) and ultimate consignee shall be notified in each case where a sample is extracted for purposes of identification or analysis. Notification will be on Form IT-915, Notice of Retained Samples.[1] This form shall be prepared by the customs official, showing the name of the port of exit, the date of sampling, shipper's export declaration number, license number (if any) mark and case numbers, amount of sample taken, manufacturer's number, and a description of the commodity. The form shall be prepared in triplicate. The original shall be placed in the opened package, box, crate, or other container; the duplicate shall be sent to the exporter or his agent; and the triplicate shall be retained by the collector.

(3) *Disposal of samples.* Samples withdrawn for analysis will be disposed of in accordance with the procedure followed by collectors of customs for disposing of samples of imported commodities.

8. Section 380.2 *Amendments or alterations of licenses* paragraph (a) *Where to file* is amended in the following particulars:

Subdivision (i) *Delegation of authority* of subparagraph (1) *General* is amended to read as follows:

(i) *Delegation of authority.* Authority to amend export licenses (Form IT-628) subject to the limitations set forth in subparagraph (2) of this paragraph, is delegated to the following field offices of the Department of Commerce:

Boston.	New Orleans.
Chicago.	New York.
Cleveland.	Philadelphia.
Detroit.	Portland, Oreg.
Houston.	San Francisco.
Jacksonville.	Savannah.
Los Angeles.	Seattle.
Miami.	

This amendment shall become effective as of July 23, 1953, with the exception of Part 8 which shall become effective as of July 31, 1953.

(Sec. 3, 63 Stat. 7; 65 Stat. 43; 67 Stat. 62; 50 U. S. C. App. Sup. 2023. E. O. 9630, Sept. 27, 1945, 10 F. R. 12245, 3 CFR, 1945 Supp., E. O. 9919, Jan. 3, 1948, 13 F. R. 59, 3 CFR, 1948 Supp.)

KARL L. ANDERSON,
Acting Director
Office of International Trade.

[F. R. Doc. 53-6677; Filed, July 29, 1953; 8:50 a. m.]

[6th Gen. Rev. of Export Regs., Amdt. P. L. 49 [1]]

PART 399—POSITIVE LIST OF COMMODITIES AND RELATED MATTERS

MISCELLANEOUS AMENDMENTS

Section 399.1 *Appendix A—Positive List of Commodities* is amended in the following particulars:

1. General Notes to Appendix A is amended in the following particulars:

a. In the note following paragraph (f) *Validated license required* the parenthetical reference "(Commodities licensed by other agencies of the government are described in §§ 370.4, 370.5, 370.6, and 370.7 of this subchapter.)" is amended to read as follows: "(Commodities licensed by other agencies of the government are described in § 370.4 of this subchapter.)"

b. Paragraph (h) *Explanation of symbols in column headed "Commodity Lists"* is amended to read as follows:

(h) *Explanation of symbols in column headed "Commodity Lists"*

Symbol	Special requirement referred to—	Section
A	Import certificate delivery verification	373.2
B	(1) Submission of Form IT-375 for prior approval before shipment against DL license	374.2
	(2) Commodities excepted from Time Limit (TL) license	Part 377
D	Evidence of availability	373.3
E	Periodic requirements license	Part 376

This part of the amendment shall become effective as of July 23, 1953.

2. The following commodities are added to the Positive List:

Dept. of Commerce Schedule B No.	Commodity	Unit	Processing code and related commodity group	GLV dollar-value limits	Validated license required
	Plastics and resin materials:				
	Synthetic resins:				
	Tar-acid resins (unmodified, modified, and/or substituted), including phenolic, phenol-formaldehyde, phenol-furfural, cresol-formaldehyde resins in powder, granular, flake, lump, liquid, pallet, dice, sheet or other unfinished form, except laminated (including cast resin in sheets, rods and tubes) (specify use, i. e., whether for molding, for use in protective coatings, etc.) (report laminated in 826010 and 826050; manufactured products in 981510 and 981590):				
825550	Phenol-resorcinol-formaldehyde resin	Lb.	RESN	100	RO
825550	Resorcinol-formaldehyde resin	Lb.	RESN	100	RO

This part of the amendment shall become effective as of 12:01 a. m., July 30, 1953.

3. The following commodities are deleted from the Positive List:

Dept. of Commerce Schedule B No.	Commodity
	Manganese:
664543	Semifabricated forms, n. e. c. (specify by name).
820588	Sulfur formulations containing 20 percent or more sulfur (specify by name and/or compositions).

This part of the amendment shall become effective as of 12:01 a. m., July 23, 1953.

Shipments of any commodities removed from general license to Country Group R or Country Group O destinations as a result of changes set forth in item 2 of this amendment which were on dock, on lighter, laden aboard an exporting carrier, or in transit to a port of exit pursuant to actual orders for export prior to 12:01 a. m., July 30, 1953, may be exported under the previous general license provisions up to and including August 22, 1953. Any such shipment not laden aboard the exporting carrier on or before August 22, 1953, requires a validated license for export.

(Sec. 3, 63 Stat. 7; 65 Stat. 43; 67 Stat. 62; 50 U. S. C. App. Sup. 2023. E. O. 9630, Sept. 27, 1945, 10 F. R. 12245, 3 CFR, 1945 Supp., E. O. 9919, Jan. 3, 1948, 13 F. R. 59, 3 CFR, 1948 Supp.)

KARL L. ANDERSON,
Acting Director,
Office of International Trade.

[F. R. Doc. 53-6678; Filed, July 29, 1953; 8:51 a. m.]

[1] Filed as part of the original document.

[1] This amendment was published in Current Export Bulletin No. 709, dated July 23, 1953.

TITLE 24—HOUSING AND HOUSING CREDIT

Chapter II—Federal Housing Administration, Housing and Home Finance Agency

Subchapter D—Multifamily and Group Housing Insurance

PART 232—MULTIFAMILY HOUSING INSURANCE: ELIGIBILITY REQUIREMENTS OF MORTGAGE COVERING MULTIFAMILY HOUSING

SUPERVISION OF MORTGAGORS

1. Section 232.18 (b) is hereby amended to read as follows:

(b) In all other cases a mortgagor must certify that at final endorsement of the loan for insurance the property covered by the mortgage is free and clear of all liens other than such mortgage, and that there will not be outstanding any other unpaid obligation contracted in connection with the mortgage transaction, the purchase of the mortgaged property, or the construction of the project, except such obligations as may be approved by the Commissioner as to terms, form and amount. Such obligations may include the amount of such funds as may be loaned to the corporation by the stockholders with the approval of the Commissioner prior to the endorsement of the mortgage for insurance to provide the sum estimated by the Commissioner to be necessary for the completion of the project over and above mortgage proceeds, plus funds deposited pursuant to § 232.19 (c) (1), if any.

2. Section 232.19 (a) is hereby amended by striking out subparagraph (1) by redesignating subparagraphs (2) and (3) as subparagraphs (1) and (2) and by amending the new subparagraph (1) to read as follows:

(1) The number of shares of capital stock, either with or without par value, in the case of a corporation, or such appropriate evidences of interest in the case of an association, a cooperative society, or a trust, may be issued in such amounts and form as may be agreed upon by the sponsors and the Commissioner prior to the endorsement of the mortgage for insurance. No stock or interest shall be redeemed, purchased, or paid off by the mortgagor during the period in which the mortgage insurance is in force, except with the approval of the Commissioner.

3. Section 232.19 (b) is hereby amended to read as follows:

(b) *Rate of return.* Dividends or distribution of income may be declared or paid only as of the end of a semiannual or annual fiscal period. Dividends or distribution of income may be declared and paid only from earned income legally available for dividends or distribution of income in excess of all operating expenses, taxes, assessments, fixed charges, mortgage insurance premiums, required allocations to the Reserve Fund for Replacements, and interest and principal on the insured mortgage. The charter will make provision for dividends or distribution of income as provided herein.

4. Section 232.19 (c) (1) is hereby amended to read as follows:

(c) *Control of funds during construction.* (1) The mortgagor shall deposit with the mortgagee or, in a depository satisfactory to the mortgagee and under control of the mortgagee an amount equivalent to not less than 1½ percent of the original principal amount of the mortgage, for the purpose of meeting the cost of equipping and renting the project subsequent to completion of construction of the entire project or units thereof and, during the course of construction, for allocation by the mortgagee to the accruals for taxes, mortgage insurance premiums, hazard insurance premiums and assessments required by the terms of the mortgage as outlined in § 232.13.

(Sec. 211, as added by sec. 3, 52 Stat. 23; 12 U. S. C. 1715b. Interprets or applies sec. 207, 48 Stat. 1252, as amended; 12 U. S. C. 1713)

Issued at Washington, D. C., July 24, 1953.

GUY T. O. HOLLYDAY,
Federal Housing Commissioner.

[F. R. Doc. 53-6660; Filed, July 29, 1953; 8:46 a. m.]

Subchapter M—Military Housing Insurance

PART 292—ELIGIBILITY REQUIREMENTS FOR MILITARY HOUSING INSURANCE

ELIGIBLE MORTGAGORS; PROPERTY FREE OF LIENS AND OBLIGATIONS

Section 292.25 is hereby amended to read as follows:

§ 292.25 *Property free of liens and obligations.* A mortgagor must certify that at final endorsement of the loan for insurance the property covered by the mortgage is free and clear of all liens other than such mortgage, and that there will not be outstanding any other unpaid obligation contracted in connection with the mortgage transaction, the purchase of the mortgaged property, or the construction of the project, except such obligations as may be approved by the Commissioner as to terms, form and amount. Such obligations may include the amount of such funds as may be loaned to the corporation by the stockholders with the approval of the Commissioner prior to the endorsement of the mortgage for insurance to provide the sum estimated by the Commissioner to be necessary for the completion of the project over and above mortgage proceeds, plus funds deposited pursuant to § 292.30, if any.

(Sec. 808, 63 Stat. 570; 12 U. S. C. 1748g)

Issued at Washington, D. C., July 24, 1953.

[SEAL] GUY T. O. HOLLYDAY,
Federal Housing Commissioner.

[F. R. Doc. 53-6661; Filed, July 29, 1953; 8:47 a. m.]

Subchapter O—National Defense Rental Housing Insurance

PART 296—ELIGIBILITY REQUIREMENTS FOR NATIONAL DEFENSE RENTAL HOUSING INSURANCE

ELIGIBLE MORTGAGORS AND SUPERVISION OF MORTGAGORS

Section 296.19 (b) is hereby amended to read as follows:

(b) In all other cases a mortgagor must certify that at final endorsement of the loan for insurance the property covered by the mortgage is free and clear of all liens other than such mortgage, and that there will not be outstanding any other unpaid obligation contracted in connection with the mortgage transaction, the purchase of the mortgaged property, or the construction of the project, except such obligations as may be approved by the Commissioner as to terms, form and amount. Such obligations may include the amount of such funds as may be loaned to the corporation by the stockholders with the approval of the Commissioner prior to the endorsement of the mortgage for insurance to provide the sum estimated by the Commissioner to be necessary for the completion of the project over and above mortgage proceeds, plus funds deposited pursuant to § 296.23 (a) if any.

Section 296.23 (a) is hereby amended to read as follows:

§ 296.23 *Control of funds during construction.* (a) The mortgagor shall deposit with the mortgagee, or in a depository satisfactory to the mortgagee and under the control of the mortgagee an amount equivalent to not less than 1½ percent of the original principal amount of the mortgage, for the purpose of assuring monthly accruals with the mortgagee during the construction period for the second mortgage insurance premium, real estate taxes due in the year following completion of construction, total premiums for permanent hazard insurance for one year and expenses incidental to equipping and renting the project subsequent to completion of the entire project or units thereof.

(Sec. 907, 65 Stat. 301; 12 U. S. C. 1750f)

Issued at Washington, D. C. July 24, 1953.

GUY T. O. HOLLYDAY,
Federal Housing Commissioner

[F. R. Doc. 53-6662; Filed, July 29, 1953; 8:47 a. m.]

TITLE 25—INDIANS

Chapter I—Bureau of Indian Affairs, Department of the Interior

Subchapter I—Irrigation Projects; Operation and Maintenance

PART 130—OPERATION AND MAINTENANCE CHARGES

FLATHEAD INDIAN IRRIGATION PROJECT, MONTANA

JULY 21, 1953.

On June 11, 1953, there was published in the daily issue of the FEDERAL REGISTER, notice of intention to modify §§ 130.24, 130.26 and 130.28 of Title 25,

Code of Federal Regulations, dealing with irrigable lands of the Flathead Indian Irrigation Project, Montana, that are subject to the jurisdiction of the several irrigation districts, as follows:

Charges applicable to all irrigable lands of the Flathead Indian Irrigation Project that are included in the Irrigation District Organization and are subject to the jurisdiction of the three irrigation districts.

Interested persons were thereby given opportunity to participate in preparing the modification by submitting data or written arguments within 30 days from the publication of the notice. No objections were submitted. Accordingly, §§ 130.24, 130.26 and 130.28 are modified as follows:

§ 130.24 *Charges.* Pursuant to a contract executed by the Flathead Irrigation District, Flathead Indian Irrigation Project, Montana, on May 12, 1928, as supplemented and amended by later contracts dated February 27, 1929· March 28, 1934, August 26, 1936, and April 5, 1950, there is hereby fixed, for the season of 1954, an assessment of $200,000 for the operation and maintenance of the irrigation system which serves that portion of the project within the confines and under the jurisdiction of the Flathead Irrigation District. This assessment involves an area of approximately 68,392 acres; does not include any land held in trust for Indians and covers all proper general charges and project overhead.

§ 130.26 *Charges.* Pursuant to a contract executed by the Mission Irrigation District, Flathead Indian Irrigation Project, Montana, on March 7, 1931, approved by the Secretary of the Interior on April 21, 1931, as supplemented and amended by later contracts dated June 2, 1934, June 6, 1936, and May 16, 1951, there is hereby fixed, for the season of 1954, an assessment of $37,300 for the operation and maintenance of the irrigation system which serves that portion of the project within the confines and under the jurisdiction of the Mission Irrigation District. This assessment involves an area of approximately 13,210 acres; does not include any land held in trust for Indians and covers all proper general charges and project overhead.

§ 130.28 *Charges.* Pursuant to a contract executed by the Jocko Valley Irrigation District, Flathead Indian Irrigation Project, Montana, on November 13, 1934, approved by the Secretary of the Interior on February 26, 1935, as supplemented and amended by later contracts dated August 26, 1936, and April 18, 1950, there is hereby fixed, for the season of 1954, an assessment of $14,400 for the operation and maintenance of the irrigation system which serves that portion of the project within the confines and under the jurisdiction of the Jocko Valley Irrigation District. This assessment involves an area of approximately 5,671 acres; does not include any lands held in trust for Indians and covers all proper general charges and project overhead.

(Secs. 1, 3, 36 Stat. 270, 272, as amended; 25 U. S. C. 385)

PAUL L. FICKINGER,
Area Director

[F. R. Doc. 53-6656; Filed, July 29, 1953; 8:45 a. m.]

TITLE 32—NATIONAL DEFENSE

Chapter VII—Department of the Air Force

Subchapter G—Personnel

PART 881—PERSONNEL REVIEW BOARDS

PART 882—DISCHARGE OR RELEASE FROM ACTIVE DUTY

AIR FORCE DISABILITY REVIEW BOARD; HARDSHIP

1. Paragraphs (a) and (d) of § 881.32 are revised as follows:

§ 881.32 *Application for review.* (a) Any officer desiring a review of his case will make a written application therefor on AF Form 436, "Application for Review of Department of the Air Force Retiring Board Proceedings" (formerly AFPMP Form 108) and AF Form 436a, "Supplement of Application for Review of the Department of the Air Force Retiring Board" (formerly AFPMP Form 108a) AF Forms 436 and 436a may be obtained from the Director of Military Personnel, Headquarters United States Air Force, Washington 25, D. C.

* * * * *

(d) In a case wherein it is advisable and practicable, the Review Board, at the request of the examiner or upon its own motion, may request any Armed Forces medical facility to detail one or more medical officers to make physical examination of the applicant, if available, and report the examination results either in person or by affidavit. When testifying in person at a hearing, such medical witnesses will be subject to cross-examination. Similarly, the medical members of the Review Board may examine the applicant, if available, and testify as witnesses concerning the results of the examination.

[AFR 14-10A] (R. S. 161, sec. 202, 61 Stat. 500, as amended; 5 U. S. C. 22, 171a. Interprets or applies sec. 302, 58 Stat. 287, as amended; 38 U. S. C. 693i)

2. Section 882.18 is changed as follows:

§ 882.18 *Delegation of authority*—(a) *Approval.* Authority to order discharge under the provisions of §§ 882.16 to 882.25 is delegated to commanders of all units or installations, commanded by or the normal command of general officers, commanding officers of personnel centers, training centers, oversea replacement depots, ports of aerial embarkation, and all active Air Force installations having an authorized military strength of 4,000 or more men.

(b) *Disapproval.* Authority to finally disapprove an application for separation of an airman because of hardship is delegated to the commanders of major air commands. Major air commands may, at their discretion, delegate this authority to numbered air force or comparable level, or to the commanders mentioned in paragraph (a) of this section. Final disapproval authority is delegated to the commanders mentioned in paragraph (a) of this section for units not assigned to a major air command.

3. Paragraph (a) of § 882.20 is changed as follows:

§ 882.20 *Application.* Any airman will be permitted to submit a written application for separation for hardship. Such requests will be submitted as prescribed in paragraph (a) through (d) of this section.

(a) *When airman is in the United States.* An airman based in the United States will submit his application to his immediate commanding officer. The application will be supported by the evidence required in § 882.21. An airman assigned to an oversea unit but temporarily in the United States will submit his application to the zone of interior unit to which he is attached (normally the unit specified in leave orders as the one to which the airman is to report for return travel overseas)

* * * * *

4. Paragraph (f) of § 882.22 is changed as follows:

§ 882.22 *Other factors relating to separation.* * * *

(f) *Assistance to airmen and their dependents.* Airmen or their dependents on their initiative may request American Red Cross local chapters or other agencies for help in obtaining necessary evidence to substantiate applications for separation.

[AFR 39-13A] (R. S. 161, sec. 202, 61 Stat. 500, as amended; 5. U. S. C. 22, 171a. Interprets or applies sec. 29, 39 Stat. 187, as amended; sec. 4, 55 Stat. 627; 10 U. S. C. 652, 50 U. S. C. App. 354)

[SEAL] K. E. THIEBAUD,
Colonel, U S. Air Force,
Air Adjutant General.

[F. R. Doc. 53-6655; Filed; July 29, 1953; 8:45 a. m.]

TITLE 44—PUBLIC PROPERTY AND WORKS

Chapter I—General Services Administration

Subchapter A—Archives and Records Management

PART 2—PUBLIC USE OF RECORDS IN THE NATIONAL ARCHIVES

PHOTOGRAPHY IN THE EXHIBITION HALL

Effective on publication in the FEDERAL REGISTER, Part 2, Title 44, Code of Federal Regulations, as revised (18 F R. 1754) is hereby amended by adding a new § 2.5 to read as follows:

§ 2.5 *Photography in the National Archives Exhibition Hall.* Visitors are permitted to take photographs in the National Archives Exhibition Hall without restriction if flash bulbs or other special photo-lighting devices are not used and the photographs are not intended for commercial use. Persons desiring to take photographs requiring

the use of photo-lighting devices or for commercial purposes must obtain special permission from the Archivist. Application for such permission should be made to the Exhibits and Publications Section.

(Sec. 205, 63 Stat. 389, as amended; 40 U. S. C. Sup. 486)

Dated: July 24, 1953.

RUSSELL FORBES,
Acting Administrator

[F. R. Doc. 53-6679; Filed, July 29, 1953; 8:51 a. m.]

TITLE 47—TELECOMMUNICATIONS

Chapter I—Federal Communications Commission

[Docket No. 10470]

PART 3—RADIO BROADCAST SERVICES

TELEVISION BROADCAST STATIONS; TABLE OF ASSIGNMENTS

In the matter of amendment of § 3.606 *Table of assignments,* rules governing television broadcast stations; Docket No. 10470.

1. The Commission has under consideration its notice of proposed rule making issued April 23, 1953 (FCC 53-447) and published in the FEDERAL REGISTER on April 1, 1953 (18 F. R. 2557) In this notice, the Commission proposed to make a "drop in" assignment of Channel 5 to Glenville, West Virginia, pursuant to an express exception to the "one year rule" (§ 3.609) The last day for filing comments was extended from May 25, 1953, to June 15, 1953, in an order dated May 29, 1953 (FCC 53-630) On June 15, 1953, Polan Industries, the party seeking the assignment to Glenville, requested an extension of time to June 19, 1953, in which to reply to an opposition to the proposed assignment. That request is herewith granted.

2. Oppositions and counterproposals to the proposed amendment were filed by Appalachian Broadcast Corporation, Bristol, Virginia (herein called Appalachian) on May 27, 1953, and the West Virginia Research Center, Inc. (herein called Research Center) Salem, West Virginia, on June 3, 1953.[1] In view of the fact that its opposition was filed before the expiration of the one year waiting period and contained a counterproposal not eligible for consideration before that date, Appalachian on June 8, 1953, also filed a petition for rule making incorporating by reference the material contained in its previously filed opposition.

3. A summary of the positions taken by the contending parties is desirable. Appalachian opposes the assignment of Channel 5 to Glenville and proposes instead that this channel be assigned to Weston, West Virginia, a community of 8,945 at a distance approximately 20 miles northeast of Glenville (population 1,789) it further proposes that UHF Channel 32, presently assigned to Weston, be shifted to Glenville. Appalachian's interest in the proposed assignment stems from the fact that it is one of two competing applicants for a new television station to be operated on Channel 5 at Bristol, Virginia and more specifically, that the site chosen by it would be precluded by the assignment of Channel 5 to Glenville in view of the 161 mile separation between that site and the Glenville Post Office. In this connection, Appalachian alleges that its site in Bristol is a natural high elevation point which is needed to serve the rough mountainous area around Bristol and which provides for maximum utilization of the Bristol assignment. It claims a service area of 2,200 square miles, which, it alleges, is more in need of service than that which would be served by the proposed Glenville station. Appalachian argues that the Commission should consider the effect of the proposed assignment to Glenville on the Bristol area and its allegedly superior site. Appalachian asserts that the Polan petition does not recite any economic or population data indicating a need for an assignment or ability to support a station in the event an assignment were made to Glenville; that Weston could better support a television station by virtue of its greater population and economic importance; that the area around Weston is more in need of service than that around Glenville; and that the assignment of Channel 5 to Weston would provide a second service to a larger area than would the assignment to Glenville.

4. In reply to Appalachian, Polan Industries alleges that, assuming 100 kw and 1000 feet antenna height, there would be 4,180 square miles and 197,589 persons within the Grade A contour and 15,400 square miles and 1,131,984 persons within the Grade B contour of the proposed Glenville station; that a substantial area around Glenville will not receive any Grade A service from any existing or authorized station; and that the assignment of Channel 5 at Glenville would provide service to a larger first Grade A area than would its assignment to Weston. With respect to Appalachian's arguments based on its Bristol site, Polan Industries asserts that there are other sites available in Bristol which would meet the required spacing to Glenville, and indeed, that one alternative site mentioned by Appalachian would better serve the trade area of Bristol and surrounding cities than that chosen by it; and that in any case, the effect of an assignment on a particular site chosen by an applicant in another community is not relevant in a rule making proceeding such as this.

5. Research Center, a non-profit educational and research organization, opposes the assignment of Channel 5 to Glenville and supports Appalachian's counterproposal to assign this channel to Weston. It urges, however, that such assignment be reserved for noncommercial educational use. In support of the requested reservation, Research Center points out that such an educational station would serve the needs of 4 private colleges and 2 state supported colleges; that while the area involved would be served adequately by the five commercial assignments made to Clarksburg, Fairmont, and Weston, it does not and cannot now have proper educational television coverage; and finally, that many prominent persons and organizations advocate the establishment of an educational television station in the area.

6. In reply to this opposition and counterproposal, Polan points out that several UHF channels are available for assignment to Weston; that in the Sixth Report the Commission adopted the policy of reserving UHF rather than VHF for educational use unless there were at least 3 VHF assignments in a community or the community in question was primarily an educational center; that Weston is not an educational center nor are there 3 VHF assignments in the community and that the proposed assignment should be made to Glenville and a UHF channel, if any, should be reserved at Weston for noncommercial educational use.

7. The assignment of Channel 5 is technically feasible in a triangular area roughly 45 miles on a side with only a few communities within this area. The question presented is whether the channel should be assigned to Glenville or Weston and whether it should be reserved for noncommercial educational use. In deciding this assignment problem, we are of the opinion that Appalachian's argument with respect to its Bristol site are not relevant; we do not say that such arguments would never be considered in an assignment proceeding,[2] but that in the present circumstances where other sites are admittedly available, it is not a factor to be considered. WCAE, Inc., 9 Pike and Fischer RR 202 (Docket No. 10381) Similarly, the showings made by the parties with respect to the coverage of a hypothetical station operating from Glenville or Weston do not appear helpful in reaching a determination: It is noted that these showings are based on different assumptions, do not take into account the service limitations due to other assignments, and in any event cannot be used to predict service accurately.

8. We have evaluated the other pertinent factors and have concluded that the channel in question should be assigned to Weston. The major consideration leading us to this conclusion is the size of that community in comparison to Glenville—8,945 to 1,789 or roughly 5 to 1. In the Sixth Report, we stated, "Primary consideration was given to the fact that the VHF can effectively cover large areas and VHF was used wherever possible in larger cities since such cities have broad areas of common interest." While the pertinency of this assignment principle diminishes with the relative size of the communities involved, we feel it is still applicable to the instant situation and, in the absence of countervailing considerations, is determinative. We

[1] On July 21, 1953, Research Center filed a "Supplement" to its Oppositions of June 3, 1953, and June 19, 1953. Since the last day for filing comments was June 19, 1953, the July 21st "Supplement" is not properly before us and cannot be considered.

[2] Thus, if it were alleged and demonstrated that the proposed assignment would in effect negate an existing assignment by elimination of the last feasible site, such an argument would, of course, be pertinent.

conclude, therefore, that Weston, with its greater population, would be a better support nucleus for any proposed VHF operation in this area. With respect to the question of a demand for a VHF assignment in the area, the two communities involved are so close that any demand shown in one can reasonably be expected to be forthcoming in the other.[3] No preference on this basis would therefore appear warranted.

9. As to the question of reserving this assignment for educational use, the Commission in the Sixth Report generally reserved a channel for such use only in communities having a total of three or more assignments or which were designated as primarily educational centers; further, except for such primarily educational centers, a UHF channel was reserved in those communities where there were fewer than three VHF assignments. These assignment principles were adopted as the most reasonable adjustment, consistent with the public interest standard, of the conflicting demands for commercial and educational television. While these principles are not rigid rules to be followed in every case without regard to individual showings or circumstances, they do constitute a general guide. Their application to the instant situation in which Weston has but one VHF assignment and cannot be regarded as primarily an educational center, compels a denial of Research Center's request. It should be noted that we do not have before us and accordingly have not passed on questions raised by a request by an educational organization for the reservation of UHF Channel 32 presently assigned to Weston.

10. Authority for the adoption of the proposed amendments is contained in section 4 (i) 301, 303 (c) (d) (f) and (r) and 307 (b) of the Communications Act of 1934, as amended.

11. In view of the foregoing, *It is ordered,* That effective 30 days from publication in the FEDERAL REGISTER, the table of assignments contained in § 3.606 of the Commission's rules and regulations is changed by amending the following items:

City	*Channel No.*
West Virginia: Weston	5, 32.
District of Columbia: Washington.	4— 5— 7+ 9— 20+ *26—
Florida: Gainesville	*5— 20+
North Carolina: Raleigh	5, *22— 28—.
South Carolina: Charleston	2+ 5+ *13.

(Sec. 4, 48 Stat. 1066 as amended; 47 U. S. C. 154. Interprets or applies secs. 301, 303, 307, 48 Stat. 1081, 1082, 1084; 47 U. S. C. 301, 303, 307)

Adopted: July 22, 1953.

Released: July 24, 1953.

FEDERAL COMMUNICATIONS COMMISSION,[4]

[SEAL] T. J. SLOWIE, *Secretary.*

[F. R. Doc. 53-6683; Filed, July 29, 1953; 8:52 a. m.]

[3] In this connection, the following statement appearing on page 5 of Polan Industries' Reply to Oppositions and Counterproposals is significant: "* * * E. G. Polan, hopeful of obtaining a VHF channel in West Virginia to tie in with his UHF grants in Ashland, Wheeling, and Youngstown, requested his engineering consultant to determine whether a VHF channel could be added. He was apprised by his consulting engineer that Channel 5 could be assigned to Glenville in accordance with the Commission's mileage requirements and prior to the expiration of the one-year period. It was at that point that counsel for Polan Industries was instructed by his client to prepare the necessary petition * * *"

[4] Statement of Commissioner Hennock concurring in part and dissenting in part is filed as part of original document.

TITLE 50—WILDLIFE

Chapter I—Fish and Wildlife Service, Department of the Interior

Subchapter B—Hunting and Possession of Wildlife

PART 10—IMPORTATION OF WILD BIRD FEATHERS

Basis and purpose. The act of July 17, 1952 (66 Stat. 755) so amended paragraph 1518 of the Tariff Act of 1930 (19 U. S. C., sec. 1001, par. 1518) as to prescribe a general prohibition against the importation of the feathers or skin of any bird whether raw or processed, whether the whole plumage or skin or any part of either, whether or not attached to a whole bird or any part thereof, and whether or not forming part of another article. The prohibition against importation applies whether the bird is wild or domesticated and the only exceptions to the prohibition are provided by new subparagraphs (c) and (d) of paragraph 1518.

Subparagraph (c) provides that the prohibition against importation shall not apply in certain prescribed circumstances which are not material for the purposes of these regulations. Subparagraph (d) provides that there may be entered, or withdrawn from warehouse, for consumption in each calendar year the following quotas of skins bearing feathers:

(1) For use in the manufacture of artificial flies used for fishing: (A) Not more than 5,000 skins of grey jungle fowl (Gallus sonneratii) and (B) not more than 1,000 skins of mandarin duck (Dendronessa galericulata) and

(2) For use in the manufacture of artificial flies used for fishing, or for millinery purposes, not more than 45,000 skins, in the aggregate, of the following species of pheasant: Lady Amherst pheasant (Chrysolophus amherstiae), golden pheasant (Chrysolophus pictus) silver pheasant (Lophura nycthemera), Reeves pheasant (Syrmaticus reevesii), blue-eared pheasant (Crossoptilon auritum) and brown-eared pheasant (Crossoptilon mantchuricum)

Subparagraph (e) provides that no article specified in subparagraph (d) shall be entered, or withdrawn from warehouse, for consumption except under a permit issued by the Secretary of the Interior. The said subparagraph (e) further provides that the Secretary of the Interior shall prescribe such regulations as may be necessary to carry out the purposes and provisions of subparagraph (d) including regulations providing for equitable allocation among qualified applicants of the import quotas established by such subparagraph.

Regulations (50 CFR Part 10) published in the FEDERAL REGISTER of December 20, 1952 (17 F R. 11655), governed the allocation of quotas for the year 1952 only. The experience obtained by allocating quotas and issuing importation permits for the year 1952 indicates a need for substantial revisions in the prior regulations so as to prescribe more appropriate conditions to govern the allocation of quotas for 1953 and subsequent years.

By Notice of Proposed Rule Making published in the FEDERAL REGISTER of May 26, 1953 (18 F R. 3024) the public was invited to participate in the preparation of regulations, as required by subparagraph (e) of the act of July 17, 1952, to govern the allocation of quotas for 1953 and subsequent years by submitting their views, data, or arguments in writing to the Director, Fish and Wildlife Service, Washington 25, D. C., on or before June 1, 1953. Subsequently, the time for the submission of views was extended to June 20, 1953 (18 F R. 3175) Careful consideration has been given to the views, data, and arguments received, and it has been determined that the regulations appearing below should be promulgated to provide for equitable allocation among qualified applicants of the import quotas fixed by subparagraph (d), and to govern the issuance of permits for the entry, or withdrawal from warehouse, for consumption of the articles specified in such subparagraph.

Effective immediately upon publication in the FEDERAL REGISTER, existing §§ 10.1 to 10.5, inclusive, Title 50, Code of Federal Regulations, are revoked and the following new §§ 10.1 to 10.5 are prescribed to govern the allocation of annual quotas and the issuance of importation permits for 1953 and subsequent years.

Sec.
10.1 Application.
10.2 Filing date.
10.3 Allocation of quotas.
10.4 Importation permits.
10.5 Compliance with other regulations.

AUTHORITY: §§ 10.1 to 10.5 issued under 46 Stat. 661, as amended; 19 U. S. C. 1001, par. 1518.

§ 10.1 *Application.* All persons desiring to share in the allocation of annual import quotas for skins bearing feathers of birds of the species specified in subparagraph (d) of paragraph 1518 of the Tariff Act of 1930, as amended, shall make application during the periods specified in § 10.2 by letter addressed to the Director, Fish and Wildlife Service, Washington 25, D. C., containing the following information:

(a) Name and address of applicant and nature of feather business, such as importer, dealer in raw feathers, manufacturer, processor, or distributor.

(b) Port at which entry has been or is to be made.

(c) Quantity of each species of bird skin or part thereof for which an importation permit is desired.

(d) Applicants requesting permits for the skins of grey jungle fowl (Gallus sonneratii) and mandarin duck (Dendronessa galericulata) shall certify in their applications that such skins are to be used only in the manufacture of artificial flies used for fishing.

§ 10.2 *Filing dates.* Each application for a quota allocation shall be submitted in accordance with § 10.1 and shall be postmarked not earlier nor later than the dates set forth in paragraphs (a) (b) and (c) of this section. Applications postmarked other than during the dates specified in this section shall not be considered. Filing dates are hereby fixed as follows:

(a) Applicants desiring to participate in the allocation of quotas for the calendar year 1953 shall submit applications from August 15 through September 15, 1953.

(b) Applicants desiring to participate in the original allocation of quotas for 1954 and subsequent years shall submit applications from September 1 through September 30, 1953, and within a like period (September 1–September 30) annually thereafter during the year preceding the year for which quota allocations are to be made.

(c) Applicants desiring to participate in the reallocation of such portions of the established annual quotas as may become available on July 1 of a particular year through surrender or nonuse, in whole or in part, of importation permits expiring on June 30 (as provided in § 10.4 (c)) shall submit applications from July 1 through July 31 of the year for which the unused portions of the quota allocations were originally made.

§ 10.3 *Allocation of quotas.* As soon as practicable after the closing date for the receipt of applications as provided in § 10.2 (a) and (b) all applications timely filed shall be considered and tentative quota allocations shall be made by the method set forth in paragraphs (a) through (e) of this section. For the purposes of this section, the six species of pheasant enumerated in subparagraph (d) (2) of paragraph 1518 of the Tariff Act of 1930, as amended, shall be grouped together and considered as one species.

(a) The number of eligible applications received seeking allocations of the skins of mandarin duck, grey jungle fowl, and pheasants, respectively, shall be divided into the quotas of bird skins available for the current year for the respective species, thereby determining the average number of each species of bird skins, or parts thereof, the several applicants would be entitled to receive on an equal basis.

(b) Any person who shall have applied for an allocation in an amount equal to or less than the average quantity established pursuant to paragraph (a) of this section for all applicants for the particular species of bird skin shall be entitled to receive a tentative allocation equal to the quantity applied for.

(c) Any quantity of bird skins of a particular species remaining after meeting tentatively the requests of applicants for allocations in amounts equal to or less than the average quantity established for all applicants shall be added to the unallocated quotas and the quantities thus remaining in the allowable quotas for the several species of bird skins shall tentatively be allocated equally among applicants seeking allocations in excess of the average quantities available for allocation.

(d) Following ascertainment of the tentative allocations of quotas allowable to the several applicants for the respective species of bird skins, as provided in this section, each applicant shall be furnished a tabulation by Registered Mail, Return Receipt Requested, listing the quantities of each species of bird skin for which an allocation was requested and the quantities proposed to be allocated to each applicant. By letter addressed to the Director, Fish and Wildlife Service, Washington 25, D. C., postmarked not later than 30 days after the date of receipt of notice of the proposed allocation of quotas, each applicant must report that he is still desirous of receiving the proposed allocation and must furnish certified copies of orders, invoices, or other proof satisfactory to the said Director evidencing that orders for the desired bird skins have been placed for the purpose of importing bird skins to be charged to the allocations proposed to be made. Applicants failing to respond to the notice of proposed allocations as required in this paragraph shall be deemed to have abandoned their applications and the quantities of bird skins which otherwise would be allocated to them shall become available for allocation among applicants who shall have submitted the required showing. Applicants who use any means for submitting the showing required by this paragraph other than Registered Mail, do so at their own risk.

(e) Any quantity of bird skins of the respective species which may become available for allocation through the failure of one or more applicants to submit a proper response to the notice of proposed allocation for the year under consideration, shall promptly be allocated among those applicants whose requests for allocations were not satisfied in full; utilizing the methods prescribed in paragraphs (a) (b) and (c) of this section to determine the additional quantity of bird skins allowable to each such applicant.

§ 10.4 *Importation permits.* (a) As soon as practicable after the allocations tentatively made for the year under consideration shall have been finally determined, the quantities of the respective species of bird skins allocated to the successful applicants shall be evidenced by importation permits issued in letter form directed to the respective Collectors of Customs at the Ports of Entry specified by the applicants in their applications. Such permits shall authorize the entry, or withdrawal from warehouse, for consumption of the quantities of bird skins allocated to each applicant. Until such time as it shall be found necessary to prescribe regulations to provide for the reduction of the import quota established for pheasants, for the establishment of a subquota for a species of pheasant, or for the elimination of a species from the import quota for pheasants, as authorized by subparagraph (e) of paragraph 1518 of the Tariff Act of 1930, as amended, importation permits shall not differentiate between the six species of pheasant enumerated in subparagraph (d) (2) of said act, but shall authorize the importation of a stated number of pheasant skins in the aggregate, without specifying the species of pheasant. A copy of the importation permit shall be furnished each successful applicant as notice to him of the allocation finally made in response to his application. Each such importation permit shall be nontransferable and shall be subject to cancellation only if the Secretary of the Interior determines that it has been mistakenly issued, that the applicant therefor has made a material misrepresentation in connection therewith, or that the person in whose behalf it was issued has informed the Secretary that he will be unable to bring or import the allowed quota of bird skins into the United States during the period specified in the permit. Such permits shall be subject to the further conditions set forth in paragraphs (b) and (c) of this section as follows:

(b) Importation permits evidencing allocations of the allowable quotas for the year 1953, as finally determined pursuant to § 10.3, shall be issued as early as practicable and shall remain in effect until March 31, 1954, to allow sufficient time to complete the entry, or withdrawal from warehouse, of the bird skins authorized to be imported against the quotas for 1953. No extension of time shall be granted on any permits authorizing importations against the allocations of 1953 quotas. Any portion of the quota allocations granted for the year 1953 which may become available through surrender of an importation permit or through nonuse of any such permit, in whole or in part, on or before the expiration date of March 31, 1954, shall lapse and no reallocation shall be made of such unused quota allocations.

(c) Importation permits evidencing allocations of the allowable quotas for 1954 and such permits subsequently granted for the quotas allocated for succeeding years shall be issued as of January 1, and shall remain in effect through June 30 of the year of issue. No extension of time shall be granted on any such permit and any portion of the quota allocations which shall become available through surrender or nonuse of a permit, in whole or in part, prior to June 30, of the year for which the original allocation was made shall be reallocated among applicants who timely submit proper applications in accordance with § 10.2 (c). In making reallocations of unused portions of the quotas for the respective species of bird skins which are found to be available after June 30 of each year, the provisions of § 10.3 (a) to (e) shall not be observed, but the quantities of bird skins, or parts thereof, shall be allocated equally (having due regard to the species sought in the applications) among all applicants. Should the quantities of the respective species of bird skins available for reallocation be insufficient to permit an

equal division among all applicants, preference shall be given to the applications bearing the earliest postmark. Importation permits evidencing the reallocations made pursuant to this paragraph shall be issued as promptly as possible and shall remain in effect through December 31 of the year of issue. No extension of time shall be granted on permits authorizing importation of bird skins reallocated after June 30 of each year, and any portion of the quotas for bird skins so reallocated which may become available through surrender of an importation permit or through nonuse of any such permit, in whole or in part, on or before the expiration date of December 31 of the year of issue shall lapse and no further allocations thereof shall be made.

§ 10.5 *Compliance with other regulations.* Any importation permitted by the regulations in this part is also subject to any applicable health, quarantine, customs, or other requirements imposed by law or by regulations of duly authorized Federal or State agencies and municipalities.

Issued at Washington, D. C., this 24th day of July 1953.

DOUGLAS MCKAY,
Secretary of the Interior

[F. R. Doc. 53-6659; Filed, July 29, 1953; 8:46 a. m.]

PROPOSED RULE MAKING

DEPARTMENT OF AGRICULTURE

Production and Marketing Administration

[7 CFR Part 51]

U. S. STANDARDS FOR SAWDUST PACK GRAPES (EUROPEAN OR VINIFERA TYPE)

NOTICE OF PROPOSED RULE MAKING

Notice is hereby given that the United States Department of Agriculture is considering the issuance of revised United States Standards for Sawdust Pack Grapes (European or Vinifera type) under the authority contained in the Agricultural Marketing Act of 1946 (60 Stat. 1087; 7 U. S. C. et seq.) to supersede United States Standards for Sawdust Pack Grapes (European or Vinifera type) effective July 20, 1939.

All persons who desire to submit written data, views or arguments for consideration in connection with the proposed standards should file the same with E. E. Conklin, Chief, Fresh Products Standardization and Inspection Division, Fruit and Vegetable Branch, Production and Marketing Administration, United States Department of Agriculture, South Building, Washington 25, D. C., not later than 5:30 p. m., e. s. t. on the thirtieth (30) day after the date of publication of this notice in the FEDERAL REGISTER.

The proposed standards are as follows:

§ 51.231 *Standards for sawdust pack grapes (European or Vinifera type)*[1]—(a) *Grades*—(1) *U. S. Fancy Sawdust Pack Grapes.* U. S. Fancy Sawdust Pack Grapes consists of bunches of well developed grapes of one variety which are well matured, fairly uniform in appearance and well colored. The berries shall be firm, firmly attached to capstems and shall not be weak, shriveled at capstems, shattered, split, crushed or wet, and shall be free from decay, waterberry, sunburn and Almeria Spot, and free from damage caused by scarring, discoloration, heat, mildew, other diseases, freezing, insects or mechanical or other means.

(i) *Bunches.* The bunches shall be fairly well filled but not excessively tight. They shall also be free from injury caused by shot berries, dried berries or other defective berries or by the trimming away of defective berries and they shall weigh not less than one-half pound.

(ii) *Stems.* The stems shall be mature, well developed and strong, shall not be dry and brittle, shall be free from mold and free from damage caused by mildew or freezing. The Emperor variety shall have stems which are distinctly yellowish-green or yellow at time of packing.

(iii) *Size of berries.* Not less than 90 percent, by count, of the berries, exclusive of shot berries and dried berries, on each bunch shall have a minimum diameter as indicated by varieties as follows:

Ribier and Cardinal: 12/16 of an inch.
Tokay: 11/16 of an inch.
Almeria: 9/16 of an inch.
Thompson seedless and Black Monukka: 7/16 of an inch.
Other varieties: 10/16 of an inch.

(iv) *Tolerances.* In order to allow for variations incident to proper grading and handling, the following tolerances, by weight, shall be permitted:

(*a*) 5 percent for bunches which fail to meet the requirements for minimum diameter of berries;

(*b*) 5 percent for bunches which weigh less than one-half pound;

(*c*) 10 percent for bunches which fail to meet the color requirements;

(*d*) 5 percent for bunches which fail to meet the requirements for maturity of stems and color of stems; and,

(*e*) 5 percent for bunches and berries which fail to meet the remaining requirements of this grade, other than for maturity and uniformity of appearance, including therein not more than 3 percent for shattered berries and also including therein not more than one-half of 1 percent for berries which are seriously damaged or affected by decay.

(v) There is no tolerance specified in this grade for grapes which fail to meet the maturity requirements. However, no lot shall be considered as failing to meet these requirements because the sample of grapes from one container tests below the required percentage of soluble solids.

(2) *U. S. No. 1 Sawdust Pack Grapes.* U. S. No. 1 Sawdust Pack Grapes consists of bunches of well developed grapes of one variety which are mature and fairly well colored. The berries shall be firm, firmly attached to capstems and shall not be weak, shriveled at capstems, shattered, split, crushed or wet, and shall be free from decay, waterberry, sunburn and Almeria Spot, and free from damage caused by scarring, discoloration, heat, mildew, other diseases, freezing, insects or mechanical or other means.

(i) *Bunches.* The bunches shall not be straggly. They shall be free from damage caused by shot berries, dried berries or other defective berries or by the trimming away of defective berries and they shall weigh not less than one-half pound.

(ii) *Stems.* The stems shall be well developed and strong, shall not be dry and brittle and shall be free from mold and free from damage caused by mildew or freezing.

(iii) *Size of berries.* Not less than 90 percent, by count, of the berries, exclusive of shot berries and dried berries, on each bunch shall have a minimum diameter as indicated by varieties as follows:

Ribier, Tokay, and Cardinal: 11/16 of an inch.
Almeria: 9/16 of an inch.
Thompson seedless and Black Monukka: 7/16 of an inch.
Other varieties: 9/16 of an inch.

(iv) *Tolerances.* In order to allow for variations incident to proper grading and handling, the following tolerances, by weight, shall be permitted:

(*a*) 5 percent for bunches which fail to meet the requirements for minimum diameter of berries;

(*b*) 10 percent for bunches which weigh less than one-half pound;

(*c*) 10 percent for bunches which fail to meet color requirements; and,

(*d*) 5 percent for bunches and berries which fail to meet the remaining requirements of this grade, other than for maturity, including therein not more than one-half of 1 percent for berries which are seriously damaged or affected by decay.

(v) There is no tolerance specified in this grade for grapes which fail to meet the maturity requirements. However, no lot shall be considered as failing to meet these requirements because the sample of grapes from one container tests below the required percentage of soluble solids.

(b) *Unclassified.* Unclassified consists of grapes which have not been clas-

[1] These standards shall be applicable only to grapes properly packed in sawdust or granulated cork, and not to so-called "semi-sawdust packs" which are cushioned and/or covered with sawdust.

sified in accordance with either of the foregoing grades. The term "unclassified" is not a grade within the meaning of these standards, but is provided as a designation to show that no grade has been applied to the lot.

(c) *Application of tolerances to individual packages.* (1) The contents of individual packages in the lot, based on sample inspection, are subject to the following limitations: *Provided,* That the averages for the entire lot are within the tolerances specified for the grade:

(i) For a tolerance of 10 percent or more, individual packages in any lot may contain not more than one and one-half times the tolerance specified; and,

(ii) For a tolerance of less than 10 percent, individual packages in any lot may contain not more than double the tolerance specified, except that for shattered berries and wet berries not more than one-tenth of the packages may contain more than double the tolerance specified.

(d) *Definitions.* (1) "Well developed grapes" means grapes which are not abnormally small for the variety.

(2) "One variety" means that the grapes show similar varietal characteristics.

(3) "Well matured" means that the juice from 10 percent, by weight, of whole bunches of grapes in the container, which appear to be least mature, shall test not less than 17 percent soluble solids, as determined by the Balling or Brix scale hydrometer, except that the Tokay variety shall test not less than 18 percent, the Thompson Seedless variety shall test not less than 19 percent and the Malaga and Muscat varieties shall test not less than 20 percent.

(4) "Fairly uniform in appearance" means that not more than one-tenth of the containers in any lot may show sufficient variation in color or size of berries to materially detract from the appearance of the contents of the individual container.

(5) "Well colored" means in the case of:

(i) "Black varieties" that each bunch shall have not less than 95 percent, by count, of berries showing characteristic color. Purple to black shall be considered characteristic color for the varieties Malvoise, Rose of Peru, Black Prince and Black Hamburg; reddish-purple to black shall be considered characteristic color for Cornichon and Black Monukka. Ribier grape berries shall be considered as showing characteristic color when at least 60 percent of the surface is purple to black color, not reddish-purple;

(ii) "Red varieties" that each bunch of the Tokay variety shall have not less than 60 percent, by count, and other red varieties shall have not less than 75 percent, by count, of berries which show at least 60 percent of the surface with good characteristic color: *Provided,* That the appearance of the bunch shall not be appreciably injured by very dark berries. Light or cherry red and dark red, but not light pink or very dark or purplish-red, are considered good characteristic color for the red varieties, excepting that any color ranging from light red through purple shall be considered good characteristic color for the Cardinal variety; and,

(iii) White varieties: There are no color requirements for the white varieties.

(6) "Firm" means that the berry is reasonably turgid and does not yield more than slightly to moderate pressure.

(7) "Weak" means that the berry is relatively low in sugar content, has inferior flavor and usually is watery, translucent and somewhat soft to the touch.

(8) "Shriveled at capstem" means that the berry shows more than slight wrinkling of the skin surrounding the capstem.

(9) "Shattered" means that the berry is separated from the bunch and may or may not have the capstem atached.

(10) "Wet" means that the grapes are wet from moisture from crushed, leaking or decayed berries or from rain. Grapes which are moist from dew or other moisture condensation such as that resulting from removing grapes from a refrigerator car or cold storage to a warmer location shall not be considered as wet.

(11) "Decay" means any soft breakdown of the flesh or skin of the berry resulting from bacterial or fungus infection. Slight surface development of green mold (Cladosporium) shall not be considered decay.

(12) "Waterberry" means a watery, soft or flabby condition of the berries. Affected berries are low in sugar content, have tender skins and are easily crushed. This is an advanced or more pronounced stage of the condition referred to as "weak."

(13) "Sunburn" means injury to the berry caused by direct exposure to the sun, including "sulphur burn", occurring as a sunken and usually discolored and dried area on the exposed surface.

(14) "Damage" means any defect which materially affects the appearance, or the edible or shipping quality of the individual berry, the appearance of the bunch as a whole, or the shipping quality of the stems.

(i) Any one of the following defects, or any combination of defects, the seriousness of which exceeds the maximum allowed for any one defect, shall be considered as damage to the individual berry:

(*a*) Scarring such as that caused by thrip, mildew, rubs and similar injuries when materially affecting the appearance of the berry;

(*b*) Discoloration when any light brown, tan or darker discoloration of the skin materially affects the appearance of the berry: *Provided,* That "sunkissed" berries of the white Malaga variety which show discoloration of amber or light brown color shall not be considered as damaged. "Buckskin" berries of the Tokay variety, and similar injury to other varieties, shall be considered as damaged by discoloration;

(*c*) Heat when the flesh of the berry is affected;

(*d*) Mildew when active powdery mildew is present;

(*e*) Freezing when the berry is frozen or when the flesh of the berry is affected by freezing; and,

(*f*) Insects when any insect is present or there is visible evidence of insect injury, when mealybug residue or aphis honeydew are present, or when the appearance is materially affected by the presence of leafhopper residue.

(ii) The following shall be considered as damage to stems:

(*a*) Mildew when active powdery mildew is present on the stems, or when scars caused by this disease constrict or weaken any part of the main or lateral stems; and,

(*b*) Freezing when the stems are frozen or the capstems are swollen or dried, or when the main or lateral stems are water-soaked and limp, or dried, as a result of freezing.

(15) "Fairly well filled" means that the berries are reasonably closely spaced on main and lateral stems and that the bunch is not very loose or stringy.

(16) "Excessively tight" means that the berries are so closely wedged together that when the stem is fresh, the bunch is solid and the appearance is materially affected by berries on the lower portions being distinctly distorted from normal shape.

(17) "Injury to the bunch" means any defect which more than slightly affects the appearance of the bunch.

(18) "Shot berries" means very small berries resulting from insufficient pollination, usually seedless in those varieties which normally develop seeds. These berries may be entirely green and hard and are designated as "immature shot berries" They may mature and color uniformly with the normal berries on the bunch and are then designated as "mature shot berries"

(19) "Dried berries" means berries which are dry and shriveled to the extent that practically no moisture is present.

(20) "Well developed and strong" means that the main and lateral stems are firm, fibrous and pliable, and are not distinctly immature or spindly or threadlike at time of packing.

(21) "Diameter" means the greatest dimension of the berry measured at right angles to a line running from the stem to the blossom end.

(22) "Serious damage" means any defect which seriously affects the appearance, or the edible or shipping quality of the grapes and includes berries which are split, crushed, wet, affected by decay or waterberry, or damaged by heat or freezing, except that raisining grapes that are cracked or split, and grapes which show healed cracks at the blossom end shall not be considered as seriously damaged.

(23) "Mature" means that the juice from 10 percent, by weight, of whole bunches of grapes in the container, which appear to be least mature, shall test not less than 17 percent soluble solids, as determined by the Balling or Brix scale hydrometer, except that the varieties Emperor, Gros Colman, Pierce Isabella, Olivette Blanche, Rish Baba, Red Malaga, Cardinal, Ribier, Khalili, Dizmar and varieties similar to or synonymous with the above, shall test not less than 16 percent, and except that Muscat

varieties shall test not less than 18 percent.

(24) "Fairly well colored" means in the case of:

(i) "Black varieties" that each bunch shall have not less than 85 percent, by count, of berries showing characteristic color, except that in the varieties Ribier, Rose of Peru, Black Prince, Black Hamburg, and Black Monukka each bunch shall have not less than 75 percent, by count, of berries showing characteristic color. Purple to black shall be considered characteristic color for the varieties Malvoise, Rose of Peru, Black Prince and Black Hamburg; reddish-purple to black shall be considered characteristic color for Cornichon and Black Monukka. Ribier grape berries shall be considered as showing characteristic color when at least 60 percent of the surface is purple to black color, not reddish-purple;

(ii) "Red varieties" that each bunch of the Tokay variety shall have not less than 45 percent, by count, and other red varieties shall have not less than 60 percent, by count, of berries which show at least 60 percent of the surface with characteristic color. Light pink, red, dark red or purple are considered characteristic color for the red varieties. (There are no color requirements for the Pink Thompson Seedless variety, Sultanina Rose) and,

(iii) White varieties: There are no color requirements for the white varieties.

(25) "Straggly" means that the berries are so widely spaced on main and lateral stems that the bunch is distinctly open or very stemmy or stringy in structure.

Done at Washington, D. C., this 27th day of July 1953.

[SEAL] M. B. BRASWELL,
Deputy Administrator Production and Marketing Administration.

[F. R. Doc. 53-6686; Filed, July 29, 1953; 8:53 a. m.]

[7 CFR Part 921]

[Docket No. AO-222-A4]

HANDLING OF MILK IN SPRINGFIELD, MISSOURI, MARKETING AREA

DECISION WITH RESPECT TO PROPOSED AMENDMENT TO TENTATIVE MARKETING AGREEMENT AND TO ORDER, AS AMENDED

Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U. S. C. 601 et seq.) and the applicable rules of practice and procedure, as amended, governing proceedings to formulate marketing agreements and marketing orders (7 CFR Part 900) a public hearing was conducted at Springfield, Missouri, on May 28, 1953, pursuant to notice thereof which was issued on May 23, 1953 (18 F R. 3001)

Upon the basis of the evidence introduced at the hearing and the record thereof the Assistant Administrator, Production and Marketing Administration, on July 14, 1953, filed with the Hearing Clerk, United States Department of Agriculture, his recommended decision. Said decision, including notice of opportunity to file written exceptions thereto was published in the FEDERAL REGISTER on July 18, 1953 (18 F. R. 4219). No such exceptions were filed.

The material issues, findings and conclusions, and general findings of the recommended decision (18 F R. 4219, Doc. 53-6384) are hereby approved and adopted as the material issues, findings and conclusions, and general findings of this decision as if set forth in full herein.

Determination of representative period. The month of May 1953 is hereby determined to be the representative period for the purpose of ascertaining whether the issuance of an order amending the order, as amended, regulating the handling of milk in the Springfield, Missouri, marketing area in the manner set forth in the attached amending order, as amended, is approved or favored by producers who during such period were engaged in the production of milk for sale in the marketing area specified in such order.

Marketing agreement and order Annexed hereto and made a part hereof are two documents entitled respectively "Marketing Agreement Regulating the Handling of Milk in the Springfield, Missouri, Marketing Area," and "Order Amending the Order, as Amended, Regulating the Handling of Milk in the Springfield, Missouri, Marketing Area," which have been decided upon as the detailed and appropriate means of effectuating the foregoing conclusions. These documents shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure, as amended, governing proceedings to formulate marketing agreements and orders have been met.

It is hereby ordered, That all of this decision, except the attached marketing agreement, be published in the FEDERAL REGISTER. The regulatory provisions of said marketing agreement are identical with those contained in the order, as amended, and as hereby proposed to be further amended by the attached order which will be published with this decision.

This decision filed at Washington, D. C., this 27th day of July 1953.

[SEAL] TRUE D. MORSE,
Acting Secretary of Agriculture.

Order[1] Amending the Order as Amended, Regulating the Handling of Milk in the Springfield, Missouri, Marketing Area

§ 921.0 *Findings and determinations.* The findings and determinations hereinafter set forth are supplementary and in addition to the findings and determinations previously made in connection with the issuance of the aforesaid order; and all of said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(a) *Findings upon the basis of the hearing record.* Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U. S. C. 601 et seq.), and the applicable rules of practice and procedure, as amended, governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), a public hearing was held upon certain proposed amendments to the tentative marketing agreement and to the order, as amended, regulating the handling of milk in the Springfield, Missouri, marketing area. Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said order, as amended, and as hereby further amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the act;

(2) The parity prices of milk produced for sale in the said marketing area as determined pursuant to section 2 of the act are not reasonable in view of the price of feeds, available supplies of feeds and other economic conditions which affect market supplies of and demand for such milk, and the minimum prices specified in the order, as amended, and as hereby further amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk and be in the public interest; and

(3) The said order, as amended, and as hereby further amended, regulates the handling of milk in the same manner as and is applicable only to persons in the respective classes of industrial and commercial activity specified in a marketing agreement upon which a hearing has been held.

Order relative to handling. It is therefore ordered that on and after the effective date hereof the handling of milk in the Springfield, Missouri, marketing area shall be in conformity to and in compliance with the terms and conditions of the aforesaid order, as amended, and as hereby further amended as follows:

The amendment provisions with respect to a proposed order amending the order regulating the handling of milk in the Springfield, Missouri, marketing area issued by the assistant administrator and published in the FEDERAL REGISTER July 18, 1953 (18 F R. 4219, Doc. 53-6384) shall be the provisions of this order and shall appear as set forth below.

1. In § 921.50 (a) delete the following: "Borden Co., Greenville, Wis.," and "Carnation Co., Jefferson, Wis."

2. In § 921.52 (a) delete "0.125" and substitute therefor the following: "0.120, and round to the nearest one-tenth cent."

3. In § 921.52 (b) delete "0.120" and substitute therefor the following: "0.115, and round to the nearest one-tenth cent."

4. Delete § 921.81 and substitute therefor the following:

§ 921.81 *Producer butterfat differential.* In making payments to producers

[1] This order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure, as amended, governing proceedings to formulate marketing agreements and orders have been met.

pursuant to § 921.80, a handler shall adjust the uniform price by adding or subtracting, as the case may be, for each one-tenth of one percent by which the average butterfat content of such producer milk is more or less than 3.5 percent, an amount equal to the butterfat differential computed pursuant to § 921.52 (b) *Provided,* That such differential shall be rounded to the nearest one-half cent.

[F. R. Doc. 53-6688; Filed, July 29, 1953; 8:54 a. m.]

[7 CFR Part 946]

HANDLING OF MILK IN LOUISVILLE, KENTUCKY, MARKETING AREA

NOTICE OF RECOMMENDED DECISION AND OPPORTUNITY TO FILE WRITTEN EXCEPTIONS WITH RESPECT TO PROPOSED AMENDMENT TO TENTATIVE MARKETING AGREEMENT, AND TO ORDER, AS AMENDED

Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U. S. C. 601 et seq.) and the applicable rules of practice and procedure, as amended, governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), notice is hereby given of the filing with the Hearing Clerk of the recommended decision of the Assistant Administrator, Production and Marketing Administration, United States Department of Agriculture, with respect to a proposal to amend the tentative marketing agreement and the order, as amended, regulating the handling of milk in the Louisville, Kentucky, marketing area. Interested parties may file written exceptions to this decision with the Hearing Clerk, United States Department of Agriculture, Washington 25, D. C., not later than the close of business the 10th day after publication of this decision in the FEDERAL REGISTER. Exceptions should be filed in quadruplicate.

Preliminary statement. The hearing, on the record of which the following findings and conclusions were formulated, was conducted at Louisville, Kentucky, on February 11–13, 1953, pursuant to notice thereof which was issued on January 28, 1953 (18 F R. 603)

By an emergency decision of the Secretary of Agriculture issued on March 6, 1953 (18 F. R. 1400) and subsequent amendment to the order effective April 1, 1953, action has been taken with respect to the differentials to be applied in the determination of the Class II price for the period from April 1953, through June 1953, and with respect to a proposal for a temporary increase in the Class I price. Said decision reserved for later determination the remaining issues contained in the hearing record.

The remaining material issues of record, decision on which is herein recommended, related to:

(1) The level of the Class II price.

(2) The method to be used in accounting for concentrated skim milk solids used in Class I products.

(3) The substitution of a new formula based primarily on cheese prices in place of the present butter-cheese formula as an alternative in the basic formula price.

(4) The amount of differential to be added to the basic formula price for determining the Class I price in the months of seasonally low milk production.

(5) The payments now required to be made on other source milk, not priced as Class I under another Federal order, which is allocated to Class I.

(6) The allocation of other source milk to Class I or Class II according to actual use of such milk.

(7) Clarification of order language concerning the classification of and accounting for inventories of milk, skim milk and cream on hand at the end of the month.

(8) An increase in the maximum rate of administrative assessment.

Findings and conclusions. The following findings and conclusions on material issues are based upon the evidence introduced at the hearing and the record thereof.

1. *Class II price.* The provisions of the order relating to the determination of the Class II price should not be changed at this time.

The order now provides that the Class II price for the months of August through March shall be the higher of two alternative formula prices, namely the average of the prices paid by 7 local manufacturing plants and a butter-powder formula based on the price of 92-score butter at Chicago and of spray and roller process non-fat dry milk solids, f. o. b. manufacturing plants in the Chicago area. For the months of flush production, April through July, the butter-powder formula used as an alternative is modified to the extent that it results in a price approximately 29 cents per hundredweight less than that obtained by using the butter-powder formula provided for the other months of the year. The average of the prices paid by the 7 local manufacturing plants is also used as an alternative formula during the months of the flush production.

During the months of flush production, handlers are required to handle substantial quantities of milk in excess of that needed to maintain their fluid milk operations in order to have adequate supplies of milk in the fall and winter months. Outlets for Class II milk disposed of during the flush production season are not, on the whole, as favorable for handlers as are the outlets available in the fall of the year when the supply of producer milk available for Class II is lower. Recognition is now given to this in the order by providing for a lower Class II price level during the April–July period, during which 4 months period significantly more than half of the total annual Class II utilization of producer milk takes place. Consequently, although the stated Class II price during the fall and winter months may appear to be relatively high, the actual weighted average Class II price on an annual basis is approximately 16 cents below the order Class II price for the fall and winter months.

The pricing of milk in the months of flush production should be at the rate at which milk produced for the market will be handled so that such surplus milk production will not disrupt the orderly marketing of milk. Further consideration was given this matter on the basis of the record of the hearing on which this decision is based by allowing handlers a credit on Class II butterfat used in the manufacture of butter and American type cheese during the spring months of this year. This allowance was made because of the abnormal condition which prevailed in the Louisville market during this period with regard to the marketing of surplus producer milk. Evidence in the record indicates that the situation which prevailed this spring in the Louisville market by reason of the record-breaking deliveries of producer milk and the distressed marketing conditions for manufacturing milk was unusual. It cannot be assumed that this unique condition will be the usual pattern in the future. To revise on a permanent basis the level of Class II price on such an assumption would be unjustified.

Because there is a limited supply of producer milk for Class II during the months of short production, the market for those products which will command the best return are served first. In addition, the higher price for Class II milk during these months of short supply tends to encourage the transfer of milk from the least favorable manufacturing uses to Class I outlets at that time.

Handlers had proposed that the average of the prices paid by 7 local manufacturing plants be the Class II price. This would have had the effect during 1952 of providing an average Class II price 34 cents per hundredweight less than that which had prevailed under the order.

The average of the prices paid by the 7 local manufacturing plants has for many years been one of the alternative formulas, the highest of which is designated as the Class II price. The price obtained by using this formula has been the Class II price only 3 times during the past 4 calendar years. Generally, the price obtained by this alternative formula is significantly less than the actual Class II price under the order.

The prices paid by the local manufacturing plants for ungraded milk represent a low use value for milk for manufacturing purposes. Such prices are not representative of the value of milk for all Class II products in the Louisville market. To price Class II milk at the level paid by these plants would destroy the incentive of handlers to move producer milk into the higher priced outlets and would provide an incentive for handlers to utilize milk for manufacturing purposes when it is needed in the market for Class I uses.

Under distressed marketing conditions, there may be justification for pricing quantities of producer milk in excess of that needed to maintain the fluid milk operations of the market at the lowest priced outlet. However, to make applicable such a level of Class II prices throughout the year fails to give recognition to the historical seasonal pattern of milk production for the Louisville market.

2. *Concentrated solids-not-fat in Class I products.* Skim milk solids in products sold as Class I milk should be accounted for on the basis of the volume of skim milk required to produce such solids. Testimony in the hearing record indicates that skim milk solids now being marketed in Class I products are being derived from milk which is classified as Class II. One handler in the market having facilities for making Grade A condensed milk concentrates skim milk which is disposed of to other handlers as condensed skim milk. Milk used for this purpose is classified as Class II in the plant of the selling handler. The other handlers use this product in some instances to fortify skim milk drinks. Condensed solids so used are required to come from Grade A sources.

Under the procedure now provided by the order, the condensed skim milk used for fortification of drinks is reclassified as Class I milk and a reclassification charge is made at the rate of the difference between the Class I and Class II prices. This charge is made, however, only on the hundredweight of condensed skim milk utilized in Class I and, as a result, a portion of the producer milk originally used in the production of fortified skim milk drinks remains in Class II even though there is no end product except the Class I milk drink.

Skim milk drinks are fortified by the addition of extra solids in order to improve their quality and acceptability to consumers. Testimony in the record indicates that only a small quantity of solids is added, but that such solids definitely improve the salability of the product. The additional solids contained in such fortified skim milk increase the value of the end product and should be classified as Class I and paid for at the same rate as all other Class I solids. No reason is recognized why one portion of the solids-not-fat contained in Class I products should be different from another portion with respect to cost of production, sanitary requirements, seasonality of production, need for regular supplies, value to consumers, or class prices. The pricing provisions of the order are designed to encourage sufficient production of milk to insure regular supplies of milk for all Class I uses. No question was raised on the hearing record as to the propriety of classifying fortified products as Class I.

The order presently provides that additional butterfat above 3.8 percent contained in Class I products shall be charged on the basis of the butterfat differential at the same rate as the butterfat represented by the basic butterfat test. The accounting system used in charging for non-fat solids in Class I, however, has resulted in charges for such milk only on the basis of the hundredweight of end product involved with no recognition of the actual solids content of such product.

No basis was presented on the hearing record whereby it would be possible or feasible to adjust class prices on the basis of an exact determination of solids-not-fat content of the milk. Nevertheless, an adjustment should be made in the cost of Class I milk when the sales in such class are in the form of products from which part of the original water has been removed and not replaced. The only feasible method for this cost adjustment appears to be to adjust the volume of Class I milk disposition in accordance with the volume of original milk required to produce the end product, disregarding any plant loss which may be involved. This adjustment should be made without regard to the source of the milk solids used in Class I. The relationship between other source milk and producer milk now provided in the order with respect to allocation and classification should be the same regardless of the form in which the milk solids are obtained and utilized in Class I disposition. Receipts of other source concentrated skim milk products should be considered as receipts of the equivalent volume of skim milk which would be required in the production of such products.

The accounting method used for skim milk received in concentrated form from other sources should be the same whether its ultimate disposition is as Class I or Class II milk. Such accounting system will have no effect on the classification of other source milk used in Class II. The effect of this change on calculation of loss will be very minor so far as Louisville handlers are concerned.

3. *Use of cheese price quotations in basic price formula determination.* The portion of the basic formula price known as the "butter-cheese" formula should be deleted, and a new formula substituted therefor. The new formula should represent the value of milk used for cheese-making.

The basic formula price is now determined by choosing the higher of the prices calculated on the basis of a formula which reflects the value of milk used for butter and nonfat dry milk solids and the average of prices paid by certain condenseries in addition to the "butter-cheese" formula. Two of the major outlets for manufacturing milk are represented by the first two of these alternative prices. Substitution of the formula herein recommended for the latter of these alternatives will provide more direct reflection of the value of milk for cheese, which is the third major outlet for manufacturing grade milk.

The Class I price differential is designed to provide the premium over manufacturing grade milk necessary to insure the market of an adequate supply of pure and wholesome milk. This premium must be added to the value of milk for the highest priced manufacturing outlet in order to avoid impairment of the differential. If one outlet for manufacturing milk were to yield a higher return to farmers than other outlets over a period of time and such higher return were not reflected in increased Class I prices, the incentive to producers for producing milk for the fluid market as compared to manufacturing milk would be reduced. The supplies of milk for the market might suffer as a result.

The record discloses that cheese manufacturing is one of the primary outlets for ungraded milk in the Louisville milkshed. It is considered appropriate, therefore, that the value of milk for cheese-making be part of the basic formula under the Louisville order.

The present butter-cheese formula is inadequate for this purpose since it gives primary weight to the butter value. In addition, changes in the value of the solids-not-fat portion of the milk are largely overlooked by the butter-cheese formula. The value of solids-not-fat has increased considerably since the time when this formula was first incorporated into the order. For this reason, the price now reflected by the formula is unrealistic.

The cheese formula herein recommended estimates the value of milk for cheese manufacture on the basis of the monthly price for cheddar cheese in primary markets in Wisconsin, and the price of 92 score butter in Chicago. The 92 score butter price at Chicago is widely recognized and is now used for various purposes in the order. The price quotation for cheese in the primary markets of Wisconsin is based on a substantially larger volume of trading than other available quotations. The price data are gathered and reported by the official price reporting service of the Department of Agriculture. These quotations are considered to be the best available for the purpose.

Coupled with the yield factors for cheese and whey fat, and making allowance herein found appropriate, the above quotations have produced an estimated price which was in close alignment with the prices actually paid farmers by Wisconsin cheese plants. The pay prices used for this comparison are those reported by the Bureau of Agricultural Economics.

Since the purchase of milk for cheese is highly competitive in the State of Wisconsin, the changes in value of milk for cheese making can be expected to be reflected promptly in the cheese factory pay prices in that state. A substantial proportion of the cheese made in this country is made in Wisconsin and quotations of prices paid in Wisconsin can be considered to be based on an adequate sample of the market for milk for cheese making.

Comparison with Wisconsin prices is considered appropriate also because most of the condenseries included in one of the other basic formula factors are located in Wisconsin.

4. *Class I differential.* The amount of the differential to be added to the basic formula price in determining the Class I price during the months of September through December should not be changed.

The order now provides that in each month the same amount, $1.25, be added to the basic formula price in determining the Class I price. As proposed by producers at the hearing, the amount of the differential would be increased 22 cents per hundredweight for the months of September through December.

Effective September 1, 1952, the order was amended to provide for an increase in the Class I differential of 44 cents per hundredweight for the six month period ending February 28, 1953. The order had been amended in the same manner for the five month period, October 1951 through February 1952. In both these

instances the basis for requesting the increase in the Class I price, which was granted on an emergency basis, was the extreme drought conditions which prevailed throughout substantial portions of the milkshed. During both these periods below normal rainfall for sustained periods resulted in many of the counties in the Louisville production areas having been declared disaster areas by the Federal Government.

It was contended at the hearing that a permanent increase in the Class I differential should be incorporated into the order for the fall months instead of providing increases on an emergency basis as was done in each of the two past years. This might be warranted if the abnormal weather conditions which prevailed during the 1951 and 1952 drought periods were typical of the conditions for the Louisville production area for the late summer and early fall months. Evidence on the record does not justify such an assumption.

The order was amended effective May 1, 1951, to provide for a Class I differential of $1.25 for each month of the year. Immediately prior to that time the Class I differential was $1.25 for the months of September through March and $1.05 for the other months of the year. A further amendment at that time provided for increasing by 50 percent the rate of the take out under the fall production incentive payment plan, adding April to the take out months, and adding December to the pay back months. The increase in the Class I differential, although effective in the spring months, was actually distributed to producers as an additional payment for milk delivered during the months of September through December. It was determined at that time that providing additional returns to producers for fall production on the basis of the fall production incentive plan was more desirable than any other means proposed, such as increasing the Class I differential for the fall months. At the most recent hearing there was no evidence to support a change from the present provisions of the order for distributing payments for fall production to producers.

Increases in the number of producers shipping and in the average daily producer deliveries indicate a broader base of production for the Louisville market. Production for January 1953 was 11 percent above the same month a year ago and was the highest for any January on record. Sales of Class I milk have not been expanding at as great a rate as production.

There is no evidence that the alternative forming opportunities in the area are such as to be attracting farmers away from dairying. The number of ungraded shippers who have requested inspection so that they may be approved to ship to Louisville handlers is at a high level, and evidences a potential source of increased supplies for the market.

The record is necessarily inconclusive regarding supplies of milk for the Louisville market in the fall months of this year. There may be some justification for providing within the framework of the order a provision whereby the Class I price would be automatically adjusted in accordance with the relationship between the demand for Class I milk and the changing supplies of milk for the market. The evidence on the record with regard to this matter, however, does not warrant any action at this time.

The order should be amended to specify the number of decimal points to which the Class I price should be carried. The record indicates that the nearest cent is an adequate refinement of this price. Also, two of the 18 condensories specified in § 946.50 (c) of the order should be deleted since such plants are no longer operating. Official notice is hereby taken of the fact that such plants have discontinued operations. Interested parties may take exception to such official notice if they so desire.

5. *Provisions relative to unpriced milk.* It was proposed that the provision requiring compensation payments on other source milk allocated to Class I be eliminated. Such payments now apply only to other source milk which is not classified and priced as Class I under another order issued pursuant to the act. Such payments should not be eliminated, but the rate thereof should be changed during certain months in recognition of the seasonal changes in supply and price conditions of such other source milk.

The order now provides that both country supply plants and distributing plants must meet certain minimum performance standards with respect to supplying their milk to the market in order to qualify as pool plants and have their milk priced and pooled. If a distributing plant receives milk from a plant which is not a pool plant, any priced milk in the plant is assigned to Class I use on a priority basis and any remaining Class I use is assigned to the unpriced milk.

The plant performance standards now contained in the order are considered necessary so that the returns from the sale of Class I milk in the marketing area will not be distributed widely to plants whose producers are not supplying the market or are only incidentally associated with the market. Such distribution of the consumers' money would not be to the best interest of either consumers or producers since the money which is intended to provide producers with an incentive to produce the adequate and dependable supplies of pure and wholesome milk would be dissipated through distribution to persons only incidentally engaged in the business of supplying the marketing area with milk.

The performance standards avoid unnecessary extension of regulation to plants only incidentally associated with the market. They also help avoid uneconomic situations where a plant might be given an incentive to handle quality milk and get producers to convert to Grade A production merely to share in the equalization fund of the market while the milk may not be needed by the market, or it may be intended primarily for manufacture or for sale to other markets, in which case it would not be available to the Louisville market for Class I use. The standards also help to remove incentive for uneconomic transportation of milk from distant sources simply for the qualification of a plant for pooling. Such situations as these would not occur in the absence of pooling and should not be artificially encouraged because a pool is in effect under the order.

While these performance standards are considered essential, they nevertheless have the disadvantage that they bring about a situation in which unpriced milk may be disposed of as Class I milk in the marketing area. If unpriced milk is allowed to be sold as Class I milk in the marketing area, however, with no regulation whatsoever, the classified pricing system of the order would be seriously jeopardized.

Regulation of milk prices and enforcement of use classification was considered necessary when regulation was first instituted, because producers were unable to insure that all milk used for fluid purposes would be paid for at a price commensurate with such use.

The inevitable existence of excess or surplus Grade A milk in a market provides the seeds of price instability. That portion of the milk supply which has to be marketed as surplus returns only a manufactured milk value. Any handler who can purchase such milk at prices reflecting surplus value and sell it for fluid or Class I use enjoys a marked competitive advantage over handlers paying a full Class I price for such milk.

In the absence of any competitive or regulatory force which compels all handlers to pay producers for milk used in fluid outlets at a rate commensurate with its value for such use, the position of any handler who pays Class I prices is insecure, if not untenable, whenever there is surplus milk available to the market. In the absence of conditions which insure payments according to use, the prices paid producers for milk tend to be forced through competition toward the rate of returns obtainable from marginal outlets. Experience indicates that the marginal outlets are ordinarily butter or cheese. This is particularly true in the seasons of flush milk production. Prices resulting from such competition do not create orderly marketing nor assure an adequate or dependable supply of fluid milk throughout the year.

Under the regulations of the order, producers are assured that if their milk is used for Class I purposes it will be paid for at Class I prices. Such prices are set at levels which reflect the price of feeds and other economic conditions, and insure consumers of a sufficient supply of pure and wholesome milk. Thus, the importance of preventing the sale of surplus producer milk for Class I is recognized under the order. It is no less important that safeguards be provided concerning the use of surplus milk from other markets as Class I.

A classified pricing program under regulation cannot hope to be successful in insuring returns to producers at rates contemplated by the act if it is possible during temporary periods for some handlers to purchase unpriced milk which costs them less than Class I producer milk and sell it for Class I use. Any handler who finds himself in a situation where his competitors are paying less for

fluid milk than he is paying will be compelled to resort to the same methods, if possible. This could result in disorderly marketing and in partial or substantial displacement of producer milk in the Class I market. Handlers selling unpriced milk to Class I outlets could be expected to have different product costs at various times than those selling producer milk. If unpriced milk is purchased, regular sources of supply may be abandoned by handlers, thus creating insecurity for both themselves and producers as well as consumers. Price reductions which might be made when unpriced surplus milk were purchased for temporary periods might be expected to result in price wars and possible widespread disruption of the regular distribution processes. No long term advantage could come of such chaos since consumer prices would have to return eventually to levels which would restore damage done to producers and distributors as well. Unless necessary rates of return for milk production and distribution are met, these processes cannot continue to operate effectively.

Sale of unpriced milk and consequent displacement of producer milk can occur under the order if plants distributing milk in the marketing area simply shift their purchases of milk to unregulated sources. By restricting or discontinuing purchases of milk from regulated sources, a handler could distribute unpriced milk as Class I. Alternative supplies of milk for this purpose might be obtained from any unregulated source which was acceptable to the appropriate health authority in the marketing area. Such sources would not become regulated unless they met the pooling requirements for supply plants.

Producer milk might also be displaced to the extent that handlers not qualified under the performance standards of the order distributed milk directly to consumers in the marketing area. This would be possible to some extent, under the provisions of the order, since a plant must distribute certain minimum percentages of its milk in the marketing area in order to qualify for pooling.

It is concluded, therefore, that the compensation provisions of the order are necessary to insure against the displacement of producer milk for the purpose of cost advantage. This is essential to preserve the integrity of the classified pricing program of the order. There is no choice as to what type of provision can be used for this purpose since minimum class prices may not be set under the order for handlers who do not participate in market-wide equalization. The only alternative is to levy a charge against unpriced milk to the extent necessary for the removal of any advantage there may be in using unregulated milk in Class I instead of regulated producer milk.

Several problems are involved in establishing rules for any charge or payment designed to bring about the removal of the advantage of using unregulated milk. The rate of a compensation payment for this purpose must not be so low that it will permit a handler to gain temporary or permanent advantage through sale of unpriced milk as Class I in the marketing area. It should also not be so high that it penalizes suppliers of unpriced milk who offer milk needed by the market and who are not in a position of gaining an unfair advantage by such sale of milk. The payment must be provided for in a manner which is administratively feasible and which does not bring about unjustified administrative inconvenience or expense.

Several methods might be suggested for determining what rate of payment would be appropriate. One of these is to ascertain the actual cost to the regulated handler of milk which he purchases from unregulated plants and charge as a compensation payment any amount by which the Class I price exceeded the cost of the unregulated milk used in Class I. Such a scheme is not sound from the standpoint of administrative feasibility and it would not necessarily remove the advantage in using unregulated milk even though it were feasible. Billing prices between dealers may not represent actual cost. In the case of a firm which owns or controls pool plants under the Louisville order as well as unregulated plants, the rate of payment from one plant to another if any were made would have little or no significance. If such a provision were to be adopted, the billing rate might be deliberately set in each instance at a level which would avoid any payments without regard to the value of the milk. There are firms which control plants under the Louisville order as well as unregulated plants.

A handler having no unregulated plants would no doubt find it possible to arrange a billing price on purchased milk which would avoid any compensatory payments. If a handler had the choice of paying money to the market-wide pool or to a person from whom he was buying milk, he would probably choose the latter. A kick-back arrangement or offsetting purchase and sale might readily be arranged, perhaps, through a third party. Since the billing price for milk would be a self-serving figure for both parties to the transaction, it would be virtually impossible to ascertain that it represented true cost to the purchaser.

If the stated purchase price were a true cost, it would still not fulfill the purpose of removing the advantage to unregulated milk to base compensation payments on the difference between such price and the Class I price. The record discloses that sales of priced milk between regulated handlers ordinarily take place at the class price plus a handling charge. This handling charge may vary according to circumstances, but represents a payment to the receiver of the milk to offset his purchasing and handling costs, such as receiving, weighing, testing and cooling the milk, paying producers, profit margin, and so on. The cost of receiving the milk in bulk form is somewhat less than receiving it from producers. Thus, in order to remove the advantage to unregulated milk, it would be necessary to provide that the cost of bulk unregulated milk be somewhat more than the Class I price. It would be exceedingly difficult to determine what this excess rate should be, particularly in the case of products such as skim milk and cream, where additional processing costs that must be prorated between more than one end product are involved. Furthermore, the marketing agreement act does not give the Secretary authority to enforce prices other than producer prices. This scheme for removing the advantage in using unregulated milk is rejected for these reasons.

Another method is to determine the price actually paid dairy farmers by the unregulated milk dealer who first received the milk, and base the compensation payment thereon. This method has several shortcomings. The various payment plans which might be and are used in paying farmers for milk would make the determination of pay rates to each farmer an extremely complicated task. For example, unregulated milk dealers may use varying rates of butterfat differentials, different types of base rating plans, various premium payments, and so on. These various schemes used by dealers for paying farmers could make it impossible to determine the actual rate of payment. Stated prices can be an illusion since actual cost of milk may be modified by items such as hauling subsidies or overcharges, and all kinds of supplies and services which might be overpriced or underpriced to the farmer. Whatever payment plan an unregulated milk dealer may use is a matter of his own choice. Determination of pay rates to farmers by unregulated dealers is handicapped also by the lack of verification of butterfat tests and weights. In the case of cooperatives, part of the proceeds from the sale of milk is often distributed at the end of a fiscal year.

Various types of premium payments are common in the purchase of milk from farmers both by regulated and by unregulated handlers. These include such items as quality premiums, volume premiums, special butterfat premiums, and perhaps others. What methods of payment are used by handlers of unpriced milk which might be available to the Louisville market are not known. However, a compensation payment on this basis would create an incentive for such suppliers to use the various methods of obscuring true rates of payment herein described.

This proposed plan for equalization on the basis of pay rates to farmers fails to recognize that order prices are minimum prices, and payments to producers under the order do not take into account various kinds of premiums paid producers. Regulated handlers would not be allowed to deduct premium payments from class prices. Neither should unregulated handlers, but there is no practical method of taking such payments into account under this suggested procedure.

Even though it were possible to establish with precision the actual cost of the milk purchased from farmers by unregulated handlers, this method would not provide a sound approach to the problem of establishing compensation payments. There would be the further question of what rate of payment should be required. If a payment were to be required on the unregulated milk based on the difference between prices paid farmers and some

other price, the unregulated handler could avoid payments by increasing his prices to farmers. This would give an unregulated handler the advantage over regulated handlers in that regulated handlers have no choice as to what they are required to pay farmers nor how this money is to be distributed. Likewise, it would enable unregulated suppliers to dispose of Class I milk in the marketing area with no obligation to equalize their Class I sales with other suppliers of the market. A further disadvantage would be that even though the rate of payment to producers might be known, it would still be impossible to ascertain what was the true cost of milk disposed of in the marketing area. Since milk marketed outside the marketing area would represent most of the total supply in the unregulated plant, it would be necessary to determine the payment for milk marketed to the various outlets. As pointed out subsequently in this decision, all handlers have both surplus as well as Class I milk in their plants and it is not realistic to assume that the purchase price for milk for each use is the same.

It has been suggested that in order to overcome this objection the plant of the unregulated handler be subject to audit and that the rate of compensation payment be based on the difference between the average utilization value in the unregulated plant and the average rate of payment to producers. This method is mathematically defective in that it would not recover the entire advantage of selling surplus milk as Class I in the marketing area. Also this method has not only the disadvantages associated with other schemes based on actual pay rates to producers, but it would involve a complicated and administratively unfeasible system of accounting and determination in such plants. The unregulated plants from which the Louisville handlers might obtain supplemental milk are numerous and widely scattered. It would not be possible or desirable to limit the number of plants or area from which milk might be purchased. In order to determine the utilization value in each of the plants from which milk was purchased, it would be necessary to set up a complete new set of transfer and allocation rules, perhaps with individual tailoring according to plant location, markets and supplies. It would be necessary to follow milk from these plants to its various destinations and uses to determine classification. Also, it would be necessary to ascertain sources of supply other than receipts directly from farmers and determine what priority should be given such supplies in the allocation of Class I milk. In the case of a plant which made only an incidental shipment of milk, perhaps at the end of the month, or in the case of such items as storage cream, additional complications would be involved. Earlier inventories as well as sales would have to be ascertained and classified. These measures would be expensive and difficult. Moreover, as pointed out above, it is not desirable to burden milk dealers who are not under regulation with the administrative procedures and bookkeeping that go with regulation. And yet, to make the detailed accounting necessary to establish classification, such unregulated dealers would need to maintain the same detailed records as wholly regulated handlers.

Another possible suggestion for determining the rate of compensation payments would be to base the rate of payment on the difference between blend prices prevailing in an area and the Class I price. This method has been suggested because it is assumed that unregulated handlers will be forced by competition to pay farmers approximately average blend prices. While this may be true in many instances, it is not necessarily always true, and a payment based on the difference between such prices could not be expected to insure that unregulated milk would not be used to displace regulated milk for cost reasons at all times throughout the year. Unregulated plants, as well as regulated plants, have some surplus milk at all times and particularly during the seasons of flush production. As a result, prices paid farmers are, in fact, blend prices made up of returns from the sale of milk in Class I outlets, as well as sales to the surplus market. If an unregulated plant were in a position to sell its surplus milk for Class I use in the marketing area and maintain its own Class I outlets, it would have a competitive advantage over regulated handlers who found it necessary to dispose of part of their milk as surplus.

In the absence of a compensation payment, the unregulated plant might sell its milk for Class I use in other markets at substantial handling charges whenever fluid milk tended to be in short supply, and then dispose of milk for Class I use in the regulated market to maintain its blend price during the season of flush production when Class I sales elsewhere were difficult to make. A plant which could thus keep its disposition of milk largely as Class I and avoid qualification as a pool plant would be in a position to pay its farmers at a higher rate than that received by producers under the order, or it could retain the extra money as profits. In either case, however, pool milk would be at a disadvantage relative to unregulated milk.

Since none of these suggestions presents an acceptable approach to the problem of compensation payments, it is necessary to resort to a different procedure. The only sound method of dealing with this problem seems to be one based on a recognition of the economics involved as they affect producers and handlers. This approach resolves itself primarily into a question of market values for milk.

Handlers under the order seeking to purchase unregulated milk will naturally resort to the lowest cost source from which suitable milk is available. In fixing the rate of compensation payment, it is necessary, therefore, to determine what the lowest cost source may be and to base the payment on the difference between the cost of such milk and the cost of milk priced under the order for similar use. The record contains abundant evidence to show that milk supplies are invariably larger in spring and summer than in fall and winter, and that because of relatively constant sales of fluid milk, the excess increased production must be marketed largely as surplus milk. This surplus outlet represents the opportunity cost of the milk since it is the highest price at which the milk can otherwise be sold. It is this opportunity cost or value of such milk which would be effective in determining the price at which the unregulated plant would sell such milk. The asking price of the unregulated handler would be expected to be the surplus price plus a handling charge. Such handling charge would be required to cover receiving costs plus profits, and would be a charge similar to that described earlier in connection with transactions in Class I milk between pool handlers. Milk must be received and receiving costs defrayed before it can be either manufactured or used as Class I milk.

Since considerable volumes of Grade A milk must be disposed of as surplus in various unregulated plants throughout and beyond the milkshed area, it is evident that regulated plants under the Louisville order could obtain such milk at prices equal to its value as surplus whenever the volume of milk in the area exceeded the volume essential to sustain fluid operations. In short, the true value of this milk is not the blend price paid producers but rather the price which can be obtained for it in the market when disposed of as surplus milk. The selling price of such milk would be expected to be equal to its value as surplus at the level of first receipt plus a handling charge.

The compensation payment provided in the attached order is based, therefore, on the difference between the value of the milk for surplus and the Class I value during the months of January through September, during which period surplus milk is likely to be available to the Louisville market from outside sources in substantial volumes. For this purpose, the value of surplus milk in the Louisville supply area is concluded to be the same as the value of Class II milk under the order. No evidence was adduced to indicate that the Class II price understated the value of surplus milk. In calculating the payments both values (Class I and surplus) are based on the producer price levels, f. o. b. the first receiving plant, rather than after an allowance for handling charges. The results are the same as if calculated at the level of sale between handlers, however, since costs of receiving and handling do not depend on the ultimate use of the milk.

During the remaining months of the year when milk supplies tend to be shorter, it is concluded that other source milk will not be available to handlers in the Louisville market at surplus prices and the compensation payment is based at those times on the difference between the Class I and the blend prices under the order. Generally speaking, during the months when milk is short, the supply of producer milk in the Louisville market in relation to the demand for such milk will tend to fluctuate with conditions in the general area from which unpriced milk may be available to the Louisville handlers. Thus, the rate of compensation payment based on the

difference between Class I and blend prices will adjust itself automatically according to the trend in prices of and need for outside supplies. As milk supplies in the area tend to be short, unregulated milk will cost these handlers more than the surplus price and the rate of compensation payments will be correspondingly less. If producer milk were all assigned to Class I, no compensation payment would be required. On the other hand, as the proportion of surplus pool milk increases, the rate of payment would also be increased. The record indicates that October through December are the months when milk was imported by Louisville handlers last year. Since these are the months when milk is customarily in shortest supply these months should be designated as the months with the lower rates of compensation payment.

It is concluded that the compensation payments herein provided are not only incidental, but necessary to sustain the classification and pricing of milk according to its use in the market, and that the rates of payment specified are those which are necessary and appropriate to accomplish this purpose.

It is concluded that the rate of payment recommended here will remove unfair competitive advantage of unpriced in relation to priced milk, and will thereby avoid displacement of producer milk for reasons of cost. However, if experience proves that milk is available to handlers during the fall months at prices lower than those anticipated, then it will be necessary to reconsider the rate of compensation payment on the basis of that experience. Likewise, if experience should prove that pooled handlers find it to their advantage to curtail purchases of producer milk in order to enable themselves to sell unpriced milk in the market at any time, then the rate of compensation payment would need to be reexamined on the basis of such evidence.

Compensation charges should be required of non-pool plants distributing Class I milk in the marketing area at the same rate as that charged on other source Class I milk in pool plants. It would not be possible to stabilize the classified pricing program and allow milk from non-pool plants to be distributed in the marketing area without regulation of any kind. Such milk is unpriced and poses the same threat to the classified pricing program as unpriced milk distributed through any other channel.

Handlers distributing unpriced milk in the marketing area from non-pool plants have the same opportunity cost level of surplus prices as do operators of pool plants. Such milk may be purchased and distributed in the marketing area by unregulated as well as regulated handlers. In addition, however, the operator of the non-pool plant in all probability has surplus milk in his own plant which he would want to dispose of on any basis which would yield a higher return than its value as surplus. It would be particularly easy to dispose of such milk for Class I use in the marketing area by bidding for large contracts such as hospitals, defense establishments or large institutions. With surplus outlets as the alternative, and no compensation payments to make, the non-pool handler would have an incentive or margin to underbid the seller of priced milk for such sales.

A non-pool plant might also use such price advantage in selling his surplus milk to Class I outlets for the purpose of establishing a regular trade on retail or wholesale routes to homes and stores in the marketing area. The non-pool plant might sell a limited amount of its milk into the marketing area as Class I without becoming subject to regulation. To allow a non-pool plant to use its surplus milk in this manner for establishing a regular trade in the marketing area without compensation payments would mean that such plant would have a marked competitive advantage in expanding its business over regulated handlers, selling priced milk. Such conditions could readily lead to disorderly marketing of milk.

It is considered inappropriate also that a plant distributing a small share of its milk in the marketing area should be subject to full regulation because of that small share of its milk so marketed. Such regulation might place a plant of this kind at a competitive disadvantage with respect to its unregulated competition. In some cases, a non-pool plant may be disposing of a larger share of its milk as Class I (including sales outside the marketing area) than the average utilization for the market. In such cases, the compensation payments herein provided might cost the handler less than the equalization payments such plant would pay if fully regulated as a pool plant. In these instances the sale of small quantities of milk in the marketing area would be more likely to take place by the use of the compensation payments herein provided rather than extending full regulation to the plant.

The rate of compensation payment provided for non-pool plants making distribution directly in the marketing area is the same as that for pool plants which obtain and use unpriced milk in Class I. The administrative feasibility of any other method of levying compensation payments is substantially the same as that described in the case of unpriced milk distributed in the marketing area by pool plants.

It may be contended that economic conditions and considerations of opportunity cost of the milk are different for non-pool plants distributing milk regularly on routes in the marketing area than for unpriced bulk milk obtained by pool plants as a supplemental supply. No method was presented on the record however whereby it would be feasible to recognize such distribution through the application of a different payment and not leave open the avenues for disposal of surplus milk on routes in the marketing area from non-pool plants as described heretofore in this decision.

While the primary purpose of compensation payments is to remove any competitive advantage of unregulated milk rather than to insure producers an income, there nevertheless is justification for adding such money to the producer-settlement fund. It is the purpose of the order to insure that a sufficient and dependable supply of quality milk will be available for Class I needs of the market. To the extent that Class I sales are displaced through the disposition of surplus milk from unregulated sources, producers stand to lose income from the sale of milk to the market which they are expected to supply. This loss of income would mean that the prices contemplated under the order would not be realized by producers. As a result, production might suffer in which case consumers would stand to lose because of the disappearance of milk supplies from the regular and dependable sources which have assumed the obligation of seeing that the market is supplied or Class I prices would have to be increased to offset the loss of income to producers. There is no alternative source of dependable milk supplies which would cost consumers less over a period of time than the milk supplied by regular producers. Thus, there is justification for returning to producers the difference between the value of such milk at its opportunity cost, which would otherwise be its value to the seller, and the Class I price. This would tend to offset losses sustained by producers when their milk was forced into a lower priced use. No compensation payment is required when all producer milk is assigned to Class I in the fall months. There is furthermore under the act no other alternative disposition of funds from compensation payments other than that herein provided.

If producers are to develop and maintain sources of supply as contemplated by the prices established under the order, they must have some assurance that their milk can be marketed to the Class I outlets available. This payment is not designed, however, as a means to exclude milk from the market, or to assure any group of producers that they alone will be permitted to supply the market. Any plant which cares to do so is eligible under the order to meet the performance standards and qualify as a pool plant fully subject to all provisions of the order, and assume the responsibility of serving the market. The payment is not designed to enable the market to maintain prices above those needed to insure an adequate supply of wholesome milk. As pointed out, anyone may join the pool and if prices are higher than necessary, it may be expected that added production from old and new producers would expand supplies beyond the levels required by the market. Blend prices would thus be reduced and the existence of large volumes of surplus milk would constitute evidence to the Secretary that Class I prices were too high. The compensation payment would not discourage association of dependable milk supplies with the market.

There is the question of which handler should be obligated to make the compensation payments. In the case of plants distributing milk in the marketing area, only one plant would be involved. In the case of supplemental milk obtained from unregulated sources by pool plants, either the buying or selling plant might be assessed. From the standpoint of the economics involved, it would make no difference, since the amount of payment would be the same in both cases. If the selling plant were

to be required to make payment, then it would be essential for such plant to bill the purchaser at a rate which included the compensation payment. If the purchasing handler were to make the payment, then the purchase price will be less but the actual cost will be the same because of the compensation payment.

From the standpoint of administration and enforcement, it would be much easier and simpler for the pool plant to make the payment. It is the pool handler with whom the market administrator regularly deals. Such handler would be expected to know and understand the terms and provisions of the order. He is the handler who would be responsible for distributing the milk in the regulated market. Whether or not a compensation payment would be required would depend upon the application of the allocation provisions of the order to the plant of the receiving handler.

The selling handler, on the other hand, would not be intimately familiar with the order. He would not be aware until later whether a compensation payment would be required, and might not even know at the time of the sale, particularly if the sale took place through a broker, whether his milk would be moved to a regulated market for disposition. If enforcement proceedings were to be required, it would be more convenient and logical to bring the case to trial in the area of the regulated market where the problem arose.

A finding has been made in this decision that compensation payments are necessary to support and preserve the integrity of the classified pricing system. It is also determined that such payments will not prohibit the marketing of milk nor limit the marketing of milk products from any production area of the United States. Such payments would be uniform except for adjustment by transportation differentials to any plant regardless of whether it is located in the marketing area or at any distance from the marketing area. The value which is assigned to unpriced milk in calculating the compensation payment is the same as the value at the class price which would be calculated under the order for priced milk at any plant, regardless of location. The rate of compensation payment is equal as among all handlers for similar transactions.

The quantity of milk and milk products which may be sold does depend in part upon the price fixed under the order for the particular class of utilization. Such influence should not be construed, however, as a limitation in the sense intended under the act. No price can be fixed which cannot be said to retard or encourage, depending upon the point of view, the quantity of milk and milk products which may be sold from either regulated or unregulated sources. The compensation payment herewith provided will not discriminate against producers by areas, but will provide for equalization of competitive prices by type of transaction with respect to relationship between regulated and unregulated milk.

The compensation payment herein provided has as its primary purpose the elimination of economic incentives for handlers to use unpriced milk to displace minimum priced milk in Class I sales. The rate of payment found to be appropriate for this purpose is one which recognizes general competitive conditions in the purchase and sale of regulated and unregulated milk. The same rate of payment applies to all handlers.

It is recognized, however, that general competitive conditions do not prevail in all cases. Each handler is situated differently and each individual transaction is made under different circumstances. It is not possible, however, to adjust prices or payments to individual circumstances or transactions. Such an individual approach would not be administratively or economically feasible. Compensatory payments must therefore be applied at a definite, and certain rate applicable to all handlers similarly situated. No single rate of payment can be determined, however, which would result in complete equality of cost to all handlers. Consequently, instances will undoubtedly arise which will appear to indicate that the objectives of the compensatory payment are not being achieved in particular cases. In these cases the payments required may sometimes seem harsh.

It is necessary in seeking an overall solution to problems of this nature to adopt provisions which will be reasonable and as liberal as possible, and at the same time will still guarantee the integrity of regulation. To provide inadequate payments would leave the door open to practices which would render the program ineffective. Transactions in milk are entirely at the option of handlers. They are free to complete only those transactions which are advantageous to themselves. Order provisions must recognize this fact. They must recognize, also, that the varying conditions under which milk transactions occur give rise to great complexity and some doubtful circumstances. Where marginal problems arise, they must be resolved in favor of producers under the order, otherwise the advantage may go to unregulated milk and to dealers and farmers who are not required to abide by any rules of procedure or price making.

It was argued that the proposed payments on unpriced milk are unlawful, not authorized by the act, and contrary to its provision. Kass v. Brannan, 196 F 2d 791 (CA, 1951) was cited as allegedly precluding such charges. Such argument is overruled.

The economic and regulatory justification for such charges as an integral and necessary part of the classified pricing and pooling plan for milk primarily produced for the marketing area, and the proper level of such charges, are discussed at length earlier in this decision. The charges are designed to compensate for and neutralize, within the limits of administrative feasibility, the unfair competitive advantages which non-pool milk and milk products otherwise would have because of the minimum pricing and pooling of producer milk required by the order. In the absence of such charges, handlers who buy and use only priced pool milk would be subject to competitive disadvantage. They are not penalties to preclude the sale of non-pool milk in the area. The charges should remove this unfair discrimination against pool milk and the handlers thereof. No other feasible plan was presented which would accomplish this necessary and desirable purpose.

The charges are imposed uniformly against all unpriced milk similarly situated and used, and do not discriminate against milk or milk products produced in any particular production area or areas. The provisions do not impose quantitative limits on the amounts of unpriced milk which may be sold for Class I purposes in the marketing area, nor do they prohibit such use or any other use of unpriced, non-pool milk or milk products.

Unless compensatory charges are provided, much other source milk which would not have entered the marketing area in the absence of the marketing order would be induced to enter it and be used in the high valued Class I uses solely because of the competitive advantage created for it by the pooling and pricing of producers' milk under the order. The compensatory charges counterbalance and compensate for and remove this artificial incentive favoring other source milk thus created by the order itself. Without such charges the order would tend to limit and reduce the marketing area sales of pool milk below the quantities which would have been sold absent a marketing order by favoring other source milk thus sold and utilized. The balancing compensatory charge removes such unnatural limitations on pool milk sold in the marketing area which would thus result from its class pricing under the order. The net effect is to restore in so far as possible the balance between milk from regular sources and such milk from other sources which would have existed in the absence of an order.

The act requires that prices fixed under the order for milk purchased from producers or associations of producers be uniform as to all handlers, subject only to usual adjustments such as those for butterfat content and location of the milk. The only prices fixed under the order are those for producer milk and they are uniform as required by the act. Class prices for pool milk under the order are for raw milk as received from farmers, f. o. b. the loading platform at the initial plant. The act does not provide for the establishment of resale prices and, consequently, there is no authority which would warrant price terms beyond those to be paid producers.

No valid comparison can be made of prices to farmers with the necessarily higher prices of milk or milk products at any later point in the marketing process. The prices between dealers necessarily must reflect, in addition to such initial farm level cost or price, subsequent handling costs such as those incurred in receiving, weighing, testing, cooling, hauling between plants, processing, and selling, as well as profits. Consequently, the compensatory charges do not purport to assure that the cost or price of non-pool milk or milk products, as bought and sold from dealer to dealer, will be no higher than the minimum class

prices for raw unassembled milk, f. o. b. initial plant. Such a comparison would be like comparing the price of any raw material at its source with the destination price of the finished or semi-finished product made from the raw material. A handler selling pool milk or milk products could not well sell it at levels as low as the minimum class price without loss to himself. Compensatory charges (or any other plan) at a rate which would assure a total maximum cost to a handler of only the minimum class price for non-pool milk and milk products received from a non-pool plant would clearly discriminate against pool milk and milk products.

6. *Allocation of other source milk.* It was proposed that other source milk be allocated according to the actual use made of such milk in the plant. Such an allocation is administratively unfeasible since the identity of milk moving through a plant cannot be traced. Such milk may be commingled with producer milk or used variously in different products in the plant. Some milk classified as Class II is bottled and goes out on routes, but is later returned to the plant for salvage. The plant operator himself may not know the physical identity of the milk from various sources. Detailed and careful personal supervision of each plant operation would be necessary to carry out this proposal. Such detailed means of administration is not feasible or desirable.

Even though allocation according to actual use were feasible it would not carry out the intended purpose of the order, namely to provide producer prices which will recognize economic conditions of the market and insure an adequate supply of pure and wholesome milk, unless the loss to producers was fully offset by compensation payments. If such loss were fully offset, there would be no difference in cost to handlers whether present or proposed allocation procedures were used.

If handlers were permitted to bring in other source milk and use it for Class I purposes whenever it was to their advantage to do so, producer returns might be jeopardized and subject to considerable instability. Handlers might bring in more milk than was absolutely essential in the confidence that it would be credited at the Class I price. Such displacement of producer milk from Class I would mean that producer milk would be sold at a lower class price. As a result, producer returns might either decrease resulting in less incentive to milk production, or class prices would have to be increased. Since it would not be feasible to increase Class II prices to maintain producer returns, the alternative would be to increase Class I prices. Thus, the cost to consumers of maintaining an adequate and dependable supply of milk would be increased. The other source milk which handlers may acquire cannot be considered as supplies on which the market may rely.

The priority of assignment of producer milk to Class I is not a device to bestow unfair advantage or protection to any person or group of persons but to assure producers who are willing to associate themselves with the market of a return which will assure the necessary rates of milk production. Any plant or producer has the same opportunity so far as the order is concerned of qualifying under the terms thereof and selling or buying milk in accordance with the prices fixed thereby.

Although the handlers might secure some milk of suitable quality through purchases on an opportunity basis at favorable prices, such supplies could not be depended on to satisfy the market needs regularly, and such acquisitions by some handlers would tend to impair the orderly marketing of milk through disruption of competition.

The record discloses that the primary purpose of handlers in making this proposal was to provide that when milk became short in the Louisville market, and outside supplies were necessary, such supplies could be acquired and assigned to Class I. One of the major handlers in the market presented statistics to show that he needed milk at certain times and was unable to satisfy this need with producer milk either through contacting producers or other handlers. It was testified that even though this milk was obtained from another order market at considerable expense in excess of the cost of producer milk, it was impossible for him to tailor his purchases to the point where he could get more than about 93 percent Class I utilization in his plant. Supplemental purchases were restricted to a minimum, but there was some surplus producer milk in the plant at different times throughout the month. As a result, it was contended that the milk purchased by such plant was virtually all paid for at Class I prices (part of it purchased under one order and part under another) yet utilization was at least 7 percent in Class II.

It is recommended therefore that the order be amended to allow for a limited assignment of producer milk to Class II before the assignment of milk which has been priced and paid for in accordance with the Class I pricing provisions of another Federal order. This assignment should be applied on an individual handler basis and limited to 5 percent of the receipts of priced milk from producers under the order.

Milk not priced and paid for in accordance with the Class I pricing provisions of another Federal order issued pursuant to the act should continue to be assigned to Class II first. Such milk is not subject to any regulation which will assure that it is paid for at a Class I value. As a result, milk purchased from the plants of unregulated handlers may be milk which is surplus to a fluid milk distribution business. Such milk could be expected to be available at less than a Class I value. It would be inappropriate to allow such milk which may be obtained from dealers whose asking price is determined on an opportunity cost basis rather than on a class price basis to be brought into the Louisville market and replace producer milk on any kind of a priority basis. During most of the year this would have no net effect in any event because of the compensation payment provisions of the attached amendment.

The order now recognizes that milk priced as Class I under another order is on a different basis than unregulated milk in that no compensation payments are required on the former. The record indicates that virtually all of the supplemental milk coming into the Louisville market is from plants regulated under other orders.

It is concluded, therefore, that there is no incentive for handlers to bring in milk from such sources unnecessarily, and that the cost of such milk at the plants of regulated handlers and the tolerance herein provided are such that the position of producer milk will not be jeopardized, and that the acquisition of needed supplemental milk by handlers will be facilitated.

7. *Classification of inventory variations.* The order should not be revised at this time with regard to the classification of skim milk and butterfat in milk, skim milk, and cream products on hand at the end of each month. It was proposed at the hearing that inventory variations of skim milk and butterfat be classified as Class II. This proposal was made for the purpose of incorporating into the order a practice which has prevailed in the market for some time. No testimony was offered at the hearing concerning the merits of this proposal.

The order does not provide that inventories of Class I products on hand at the end of the month shall be classified other than as Class I or that inventories of Class II products shall be classified other than as Class II. There is insufficient evidence on the hearing record to warrant amending the order at this time as it pertains to classifying skim milk and butterfat on hand at the end of each month. The matter should be considered in detail at a future hearing before adopting specific provisions in the order which might alter the procedure now being followed.

8. *Expense of administration.* The maximum rate of the administrative assessment should be increased from 2.5 to 3 cents per hundredweight.

The operating balance in the administrative fund is currently below the level of that deemed advisable. The policy which has been followed with regard to the operating reserve prescribes the maintenance of a balance necessary to carry on the work of the market administrator's office for about a 6-month period. Such a reserve is needed to provide for unforeseen contingencies in the operation of the order and for the expenses which would be incurred in the event the order was terminated.

For the year 1952 administrative expenses were $59,000, or $1,700 less than the actual income for the year. The operating balance in the fund as of December 31, 1952, was $16,500, which is $13,000 less than the 6-month operating balance which is deemed necessary.

It is expected that the maximum rate of 3 cents per hundredweight for administration expenses will be assessed for a limited period only, and that the rate of assessment will be reduced when the operating balance has reached a suitable level. Such a reduction in the rate will not require an amendment to the

order. The order stipulates only what the maximum rate shall be. The actual rate of assessment is determined by administrative action.

Rulings on proposed findings and conclusions. Briefs were filed on behalf of producers and handlers who would be subject to the proposed marketing agreement and order, as amended, and as hereby proposed to be further amended. The briefs contained suggested findings of fact, conclusions, and arguments with respect to the proposals discussed at the hearing. Every point covered in the briefs was carefully considered along with evidence in the record in making the findings and reaching the conclusions hereinbefore set forth. To the extent that the suggested findings and conclusions contained in the briefs are inconsistent with the findings and conclusions contained herein, the requests to make such findings or to reach such conclusions are denied on the basis of the facts found and stated in connection with the findings and conclusions in this recommended decision.

General findings. (a) The proposed marketing agreement and the proposed order, amending the order, as amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the act;

(b) The parity prices of milk as determined pursuant to section 2 of the act are not reasonable in view of the price of feeds, available supplies of feeds and other economic conditions which affect market supply of and demand for milk in the marketing area, and the minimum prices specified in the proposed marketing agreement and the order, as amended, and as hereby proposed to be further amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(c) The proposed order, as amended, and as hereby proposed to be further amended, will regulate the handling of milk in the same manner as, and will be applicable only to persons in the respective classes of industrial and commercial activity specified in a marketing agreement upon which a hearing has been held.

Recommended marketing agreement and order amending the order as amended. The following order amending the order, as amended, is recommended as the detailed and appropriate means by which the foregoing conclusions may be carried out. The marketing agreement is not included in this recommended decision because the regulatory provisions thereof would be identical with those contained in the order, as amended, and as hereby proposed to be further amended.

1. Delete § 946.41 (a) and substitute therefor the following:

(a) Class I milk shall be all skim milk (including concentrated or reconstituted skim milk solids) and butterfat (1) disposed of in fluid form as milk, skim milk, cream (including sour cream), buttermilk, milk drinks (plain or flavored) except skim milk and butterfat disposed of in fluid form for livestock feed; (2) disposed of in fluid form as any milk product which is required by the appropriate health authority in the marketing area to be made from milk, skim milk, or cream, from sources approved by such authority; and (3) not accounted for as Class II milk.

2. Delete § 946.50 (b) and substitute therefor the following:

(b) The price per hundredweight resulting from the following formula:

(1) Multiply by 8.53 the average of the daily prices per pound of cheese at Wisconsin Primary Markets ("cheddars," f. o. b. Wisconsin assembling points, cars or truckloads) as reported by the U. S. D. A. during the month;

(2) Add 0.902 times the Chicago butter price for the month;

(3) Subtract 34.3 cents; and

(4) Add an amount computed by multiplying the Chicago butter price for the month by 0.12 and then by 3.

3. Delete from § 946.50 (c) the following: "Borden Co., Greenville, Wis." and "Carnation Co., Jefferson, Wis."

4. Delete § 946.51 (a) and substitute therefor the following:

(a) *Class I Milk.* The price of Class I milk per hundredweight shall be the basic formula price rounded to the nearest cent plus $1.25.

5. Renumber subparagraphs (3), (4), (5) and (6) of § 946.46 (a) and all references to them wherever they appear in the order to read "(4) (5), (6) and (7)," respectively and add a new subparagraph "(3)" in § 946.46 (a) to read as follows:

(3) Subtract from the pounds of skim milk remaining in Class II an amount equal to such remainder, or the product obtained by multiplying the pounds of skim milk in milk received from producers by 0.05, whichever is less;

6. Delete the subparagraph renumbered § 946.46 (a) (6) in Amendment No. 5 above and substitute therefor the following:

(6) Add to the pounds of skim milk remaining in Class II milk the pounds of skim milk subtracted pursuant to subparagraphs (1) and (3) of this paragraph.

7. Delete § 946.61 (b) and substitute therefor the following:

(b) On or before the 13th day after the end of each month, pay to the market administrator for deposit in the producer-settlement fund in amount of money computed by multiplying the quantity of Class I milk disposed of in the manner described in § 946.11 (d) by the price arrived at by subtracting from the Class I price adjusted by the Class I butterfat and transportation differentials:

(1) For the months of January through September, the Class II price adjusted by the Class II butterfat differential; or

(2) For the months of October through December, the uniform price computed pursuant to § 946.71 adjusted by the Class I transportation differential and by a butterfat differential calculated by multiplying the total volume of producer butterfat in each class during the month by the butterfat differential for each class, dividing the resultant figure by the total butterfat in producer milk and rounding the resultant figure to the nearest one-tenth cent.

8. Delete § 946.70 (d) and substitute therefor the following:

(d) Add the amount computed by multiplying the pounds of skim milk and butterfat subtracted from Class I milk pursuant to § 946.46 (a) (2) and (b) by the price arrived at by subtracting from the Class I price adjusted by the Class I butterfat and transportation differentials:

(1) For the months of January through September, the Class II price adjusted by the Class II butterfat differential; or

(2) For the months of October through December, the uniform price computed pursuant to § 946.71 adjusted by the Class I transportation differential and by a butterfat differential calculated by multiplying the total volume of producer butterfat in each class during the month by the butterfat differential for each class, dividing the resultant figure by the total butterfat in producer milk and rounding the resultant figure to the nearest one-tenth cent.

9. In § 946.88 and in § 946.61 (c) delete the phrase "2.5 cents" and substitute therefor "3.0 cents."

Filed at Washington, D. C., this 27th day of July 1953.

[SEAL] ROY W LENNARTSON,
Assistant Administrator.

[F. R. Doc. 53-6690; Filed, July 29, 1953; 8:55 a. m.]

[7 CFR Part 975]

[Docket No. AO-179-A11]

HANDLING OF MILK IN CLEVELAND, OHIO, MARKETING AREA

DECISION WITH RESPECT TO PROPOSED MARKETING AGREEMENT AND PROPOSED AMENDMENTS TO ORDER, AS AMENDED

Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U. S. C. 601 et seq.) and the applicable rules of practice and procedure, as amended, governing the proceedings to formulate marketing agreements and marketing orders (7 CFR Part 900) a public hearing was conducted at Cleveland, Ohio, on June 17, 1953, pursuant to notice thereof which was issued on June 10, 1953 (18 F. R. 3420).

A decision with respect to a proposed amendment to the provisions for pricing Class I milk under the order during the month of July 1953 was filed June 24, 1953 (18 F. R. 3696) and an order on such amendments was issued June 29, 1953 (18 F. R. 3796). The findings and conclusions with respect to the issues dealt with herein were specifically deferred, pending further study and consideration.

Upon the basis of the evidence introduced at the hearing and the record

thereof, the Assistant Administrator, Production and Marketing Administration, on July 7, 1953, filed with the Hearing Clerk, United States Department of Agriculture, his recommended decision in this proceeding with reference to the pricing of milk in the months following July 1953. The notice of filing such recommended decision and opportunity to file written exceptions thereto was published in the FEDERAL REGISTER on July 11, 1953 (18 F R. 4072)

The material issues of record related to:

(1) A revision of the pricing provisions applicable to Class I milk, with particular reference to the "supply-demand adjustment"

Findings and conclusions. The supply-demand adjustment should be modified in the following respects:

1. The general level of the standard utilization percentages should be raised to reflect a supply of producer milk equal to 117 percent of Class I sales during November, the month of shortest supply, instead of 115 percent as at present,

2. The rate of price adjustment per point of indicated oversupply or undersupply should be reduced and should apply uniformly in all seasons of the year, and

3. The total amount of the upward or downward price adjustment in any given month should be limited to 25 cents.

Four cooperative associations of producers and a substantial group of handlers in the market jointly proposed that the supply-demand adjustment be permanently deleted from the order. The proponents' principal line of testimony in favor of deleting the adjustment was that the prices which would have resulted from its operation since November 1952 would have been below the competitive levels which handlers found it necessary to pay in order to maintain the supply of milk which they consider necessary for the operation of their milk distribution business. They testified that prices under the order must ultimately be adjusted to supply and demand conditions. However, they felt that this could be more efficiently done by amendment to the order than by an automatic supply-demand adjustment.

The record discloses considerable confusion regarding the basic purposes and method of operation of a supply-demand adjustment provision. This type of adjustment is based upon a prediction of the probable relation of supplies and sales in the market during the month for which the Class I price is being determined. If there are indications that supplies will be larger than normal in relation to Class I requirements, the Class I price is automatically reduced. On the other hand, if prospective supplies are below normal in relation to sales, the Class I price is automatically increased. The resulting change in the Class I price will tend to encourage the shifting of producers and supply plants between markets and the alteration of production plans on individual farms.

The prediction of supply-demand relationship must be based upon objective factors. There have been attempts to predict changes in milk supplies on the basis of such factors as pasture conditions, feed supplies and prices, cattle numbers, and the attractiveness of alternative farm enterprises. However, the variables are so numerous that no dependable predictors of this type have been developed. It has been found, however, that supply-demand relationships in the immediately preceding months are significantly useful in estimating prospects for the pricing month. In view of the limitations inherent in using such a predictor to estimate the prospective situation, it has been found desirable to provide a fixed Class I price differential from which the supply-demand adjustment is added or subtracted instead of having the entire differential determined by supply-demand data for recent months. Further, limits should be established for the maximum and minimum amount of the supply-demand adjustment, and the possibility of random fluctuations in the adjustment should be checked by such measures as the use of a two-month instead of a one-month predictor and the bracketing of the amount of the adjustment.

A supply-demand adjustment was included in Amendment No. 6 to the order, which became effective November 1, 1952. However, the amendment provided that actual operation of the adjustment be deferred until July 1, 1953, in order to allow the market a period of readjustment following the addition of four country plants as part of the regular market supply. These plants were qualified as pool plants in February and March 1952.

The schedule of "standard utilization percentages" established in the order is based upon a conclusion that the market requires receipts from producers to be 115 percent of gross Class I sales in November, which is usually the month of shortest supply. The standard utilization percentages for months other than November were set at the usual seasonal relationship to November. This seasonal pattern was based mainly upon 1949–1951 experience, slightly modified in the expectation that producers would deliver a more nearly uniform supply than in 1949–51. Supply-demand conditions during the pricing month were predicted by sales and receipts during the first and second months preceding the pricing month. Price changes were computed at the rate of two cents for each percentage point of indicated oversupply or undersupply, except that 3 cents per point was added in case an undersupply was in prospect during the normally short months of October, November, and December and 3 cents deducted for any prospective oversupply during the normally flush months of April, May, and June. These higher rates were designed to offer a maximum incentive to correct any prospective shortages in the fall and to discourage any excess production during the spring months.

Seasonal aspects of the supply-demand adjustment. Analysis of the testimony and data contained in the record shows that large increases in flush season supplies constitute the principal problem in the application of the supply-demand provision. In the Cleveland market, November is usually the month of lowest producer receipts in relation to sales and May is the highest. The utilization percentages (receipts from producers divided by gross Class I sales) during May and November of recent years are compared with the normal percentages, as defined in the order, in the following tabulation:

Month	1949–51 average	Standard in order	Actual percentages		
			1951	1952	1953
May	163	170	167	189	192
November	112	115	106	120	------

It will be noted that the figures used as standard in the order are closely similar to the 1949–51 average, except that they were adjusted upward to reflect a normal supply-demand ratio of 115 percent in November. In 1951 the supply was a little below normal in relation to sales in May and substantially short in November. In 1952 and 1953 the May supplies were far greater than normal; showing excesses of 19 and 22 percentage points, respectively. Supplies in November, 1952 were only 11 percent above normal, and part of this excess resulted from unusually favorable production conditions. It is evident that the major portion of the excess of supplies has occurred during the flush months. This trend towards spring production is also reflected in the data on production per producer. May production per producer exceeded that of the previous November by 43 percent in 1950, 49 percent in 1951, 56 percent in 1952, and 50 percent in 1953, the latter figure being lowered an estimated 4 or 5 points by the unusually good production conditions in November, 1952.

The seasonal variation of the standard utilization percentages should continue to reflect a somewhat more even production than the 1949–51 pattern. However, seasonal variation in the stated Class I differential should be relied upon as the principal means of encouraging a more even seasonal distribution of milk production. Accordingly, the schedule of supply-demand price adjustments should be established at a uniform rate of slightly under 2 cents per point in all seasons of the year instead of following the 3-cent rate which is currently specified in the order as a deduction per point of indicated oversupply in the spring months and as a premium per point of indicated undersupply in the fall months.

The general level of supply. The Cleveland market has experienced three distinct types of oversupply. One is that more sources of new supply were developed than were ultimately needed to counteract the shortages of late 1950 and 1951. In addition, as described earlier, flush season production has increased relative to that in the fall. A third source of oversupply is that Cleveland has shared the general increase in production which has occurred this past winter and spring, as shown below.

A considerable proportion of the larger than normal supply which has been general throughout the United States in recent months can be attributed to unusually favorable weather conditions and an abundance of feed. From January through October 1952, daily average re-

ceipts of milk per producer averaged about 4 percent over the same month of the previous year. The influence of the subsequent unusually favorable production conditions on the Cleveland supply is indicated by the fact that during the period November 1952 through April 1953, receipts per producer ranged from 8.5 to 12.6 percent over the same month of the previous year and averaged 11.1 percent over the previous period. Accepting 4 percent as a normal production increase the excess production attributable to unusually favorable conditions ranged from 4.5 to 8.6 percent and averaged 7.1 percent. (Total milk production in the United States averaged 6.1 percent greater during November 1952–April 1953 than in the same months of the previous year.) Except for these unusual conditions, it appears that producer receipts in Cleveland would have been 121 percent of Class I sales in November instead of 126 percent, 126 instead of 134 in December, 131 instead of 146 in February, 146 instead of 158 in March, and 160 instead of 171 in April.

These estimated utilization percentages, exclusive of the recent abnormal supplies, still reflect much larger supplies in relation to sales than is considered normal under the order. The oversupply ranged steadily upward from 6 percent in November to 10 percent in May.

Handlers and producers testified that supplies for the Cleveland market cannot be considered normal unless producer receipts are equal to 120 percent of Class I sales in November. The order now provides a normal of 115 percent. They pointed out that the Cleveland Health Department imposes unusually strict requirements on emergency sources of supply. This makes it difficult and expensive for handlers to obtain milk from any sources other than regularly inspected producers and leads them to maintain larger supplies than might otherwise be considered necessary. It was further contended that the dating of bottle caps, the adoption of every-other-day home delivery, and the discontinuance of wholesale deliveries on Sunday require larger supplies than needed to be carried before these developments occurred. Another explanation offered in support of a minimum supply of 120 percent is that the Cleveland market is not well organized for the diversion of milk supplies to the individual distributing plants where additional milk may be needed. The country supply plants are obligated to individual dealers or to a group of dealers. Most of the direct-shipped milk is similarly identified with particular handlers and thus is not readily diverted from one handler to another. There is no cooperative in a position to allocate milk among handlers for the purpose of maintaining a maximum Class I utilization from available supplies.

Inefficiency in the allocation of supplies, as described in the preceding paragraph, is not a valid reason for increasing the normal supply level to 120 percent. The higher Class I prices which would result would also tend to attract supply plants whose primary interest is not that of supplying the fluid milk requirements of the market. However, the changes in the distributive system cited by various witnesses merit a reconsideration of the normal level of supply. It is concluded that producer receipts should be equal to 117 percent of Class I use in November.

A second point which supports as low a normal as practicable for November as dwelt upon at some length by a handler representative who testified at the hearing. He maintained that the flush season supplies in Cleveland constitute a serious problem. There is general agreement that the comparative lack of milk manufacturing facilities in the Cleveland milkshed make it unusually difficult to process the seasonal excess. Based on the 1949–51 experience, May supplies would be expected to be 175 percent of Class I sales in a year when November supplies were 117 percent but would be 180 percent to correspond to a November supply of 120 percent. In May 1952 the actual percentage was 189 and in May 1953 reached 192 percent. In view of these recent high rates of flush season supply it appears definitely undesirable to raise the level of normal supply, as defined in the order, to 120. Rather, the normal for November should be kept to a practicable minimum and every means explored of increasing the efficiency of the supply system in the market.

The proponents' basic contention that the stated Class I differentials (without any supply-demand adjustment) were necessary to compete with other markets, avoid the general payment of premiums, and assure Cleveland of adequate supplies may be questioned under current and prospective conditions. Milk supplies are generally much more ample in relation to the demand for milk and dairy products than in the two-year period when large premiums were paid in Cleveland. Very similar supply increases have been experienced by other Ohio markets. In the fluid milk markets under Federal regulation with which Cleveland is in direct competition, supply-demand adjustments have all contributed to lower prices during recent months than a year ago. To the extent that the Class I differentials in the competitive markets continue below those of a year ago, the Cleveland differentials will not have to be maintained at the same levels as have been in effect since November 1952.

The monthly relationship between receipts of milk from producers and Class I sales should be revised as shown below. The resulting standard utilization percentages, reflecting normal supply-demand ratios in the first and second preceding months, are also shown:

Month	Current ratio of receipts to sales	Standard utilization percentage
	Percent	*Percent*
January	125	119
February	130	123
March	139	128
April	153	135
May	171	146
June	165	162
July	149	163
August	138	157
September	132	144
October	123	135
November	117	129
December	121	123

In view of unsettled conditions in the market the amount of price adjustment per point of indicated oversupply or undersupply should be comparatively small and the total price adjustment limited to 25 cents. The schedule is as follows:

Deviation percentage:	*Amount of supply-demand adjustment (cents)*
+13 or over	−25
+10 or +11	−19
+7 or +8	−13
+4 or +5	−7
+2 to −2	0
−4 or −5	+7
−7 or −8	+13
−10 or −11	+19
−13 or below	+25

With these modifications, the calculated reduction in the Class I differential during November and December 1952 would have been 7 cents, in January of 1953, 19 cents, and in February through July, 25 cents. It is concluded that these results would have been appropriate in the circumstances.

General findings. (a) The proposed marketing agreement and the order and all of the terms and conditions thereof will tend to effectuate the declared policy of the act;

(b) The parity prices of milk as determined pursuant to section 2 of the act are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply of and demand for milk in the marketing area, and the minimum prices specified in the proposed marketing agreement and the order are such prices as will reflect the aforesaid facters, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(c) The proposed order will regulate the handling of milk in the same manner as, and will be applicable only to persons in the respective classes of industrial and commercial activity specified in a marketing agreement upon which a hearing has been held.

Rulings. Within the period reserved for filing exceptions to the recommended decision, exceptions were submitted on behalf of interested parties. These exceptions have been fully considered and to the extent to which the findings and conclusions of this decision are at variance with the exceptions, such exceptions are hereby overruled.

Determination of representative period. The month of April, 1953, is hereby determined to be the representative period for the purpose of ascertaining whether the issuance of amendments to the order regulating the handling of milk in the Cleveland, Ohio, marketing area in the manner set forth in the attached amending order is approved or favored by producers who during such period were engaged in the production of milk for sale in the marketing area specified in such marketing order, as hereby amended.

Marketing agreement and order. Annexed hereto and made a part hereof are two documents entitled respectively, "Marketing Agreement Regulating the Handling of Milk in the Cleveland, Ohio, Marketing Area," and "Order Amending the Order, as Amended, Regulating the

Handling of Milk in the Cleveland, Ohio, Marketing Area," which have been decided upon as the detailed and appropriate means of effectuating the foregoing conclusions. These documents shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure, as amended, governing proceedings to formulate marketing agreements and orders have been met.

It is hereby ordered, That all of this decision, except the attached marketing agreement, be published in the FEDERAL REGISTER. The regulatory provisions of said marketing agreement are identical with those contained in the order, as amended, and as hereby proposed to be further amended by the attached order which will be published with this decision.

This decision filed at Washington, D. C., this 27th day of July 1953.

[SEAL] TRUE D. MORSE,
Acting Secretary of Agriculture.

Order[1] Amending the Order as Amended, Regulating the Handling of Milk in the Cleveland, Ohio, Marketing Area

§ 975.0 *Findings and determinations.* The findings and determinations hereinafter set forth are supplementary and in addition to the findings and determinations previously made in connection with the issuance of the aforesaid order and of each of the previously issued amendments thereto; and all of said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(a) *Findings upon the basis of the hearing record.* Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U. S. C. 601 et seq.) and the applicable rules of practice and procedure, as amended, governing the formulation of marketing agreements and marketing orders (7 CFR Part 900) a public hearing was held at Cleveland, Ohio, on June 17, 1953, upon certain proposed amendments to the tentative marketing agreement and to the order, as amended, regulating the handling of milk in the Cleveland, Ohio, marketing area. Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said order, as amended and as hereby further amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the act;

(2) The parity prices of milk as determined pursuant to section 2 of the act are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the said marketing area, and the minimum prices specified in the order, as amended, and as hereby further amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk and be in the public interest; and

(3) The said order, as amended, and as hereby further amended, regulates the handling of milk in the same manner as and is applicable only to persons in the respective classes of industrial and commercial activity specified in a marketing agreement upon which a hearing has been held.

Order relative to handling. It is therefore ordered, that on and after the effective date hereof, the handling of milk in the Cleveland, Ohio, marketing area shall be in conformity to and in compliance with the terms and conditions of the aforesaid order, as amended, and as hereby further amended; and the aforesaid order, as amended, is hereby further amended as follows:

1. In § 975.61 (a) (1) (ii) change the tabulated schedule of standard utilization percentages to read as follows:

Month for which the price is being computed:	*Standard utilization percentage*
January	119
February	123
March	128
April	135
May	146
June	162
July	168
August	157
September	144
October	135
November	130
December	123

2. In § 975.61 (a) (1) (iii) change the tabulated schedule of amounts to read as follows:

Deviation percentage:	*Amount of supply-demand adjustment (cents)*
+13 or over	−25
+10 or +11	−19
+7 or +8	−13
+4 or +5	+5
+2 to −2	0
−4 or −5	+7
−7 or −8	+13
−10 or −11	+19
−13 or below	+25

Order of the Secretary Directing That a Referendum Be Conducted Among the Producers Supplying Milk to the Cleveland, Ohio, Marketing Area, and Designation of an Agent to Conduct Such Referendum

Pursuant to section 8c (19) of the Agricultural Marketing Agreement Act of 1937, as amended (7 U. S. C. 608c (19)) it is hereby directed that a referendum be conducted among the producers (as defined in the proposed order regulating the handling of milk in the Cleveland, Ohio, marketing area) who, during the month of April 1953 were engaged in the production of milk for sale in the marketing area specified in the aforesaid order to determine whether such producers favor the issuance of the order which is a part of the decision of the Secretary of Agriculture filed simultaneously herewith.

The month of April 1953 is hereby determined to be the representative period for the conduct of such referendum.

Howard G. Eisaman is hereby designated agent of the Secretary to conduct such referendum in accordance with the procedure for the conduct of referenda to determine producer approval of milk marketing orders as published in the FEDERAL REGISTER on August 10, 1950 (15 F R. 5177) such referendum to be completed on or before the 25th day from the date this referendum order is issued.

Done at Washington, D. C., this 27th day of July 1953.

[SEAL] TRUE D. MORSE,
Acting Secretary of Agriculture.

[F. R. Doc. 53-6687; Filed, July 29, 1953; 8:53 a. m.]

[1] This order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure, as amended, governing proceedings to formulate marketing agreements and orders have been met.

NOTICES

DEPARTMENT OF DEFENSE

Department of the Army

DESCRIPTION OF CENTRAL AND FIELD AGENCIES

ARMY FIELD FORCES

Paragraph (f) of section 1 of the Statement of Organization and Functions of the Army, appearing at 15 F R. 6639, October 3, 1950, is revised to read as follows:

SECTION 1. *Description of Central and Field Agencies.* * * *

(f) *Army Field Forces*—(1) *General.* Army Field Forces is a field operating agency of the Department of the Army. The Chief of Army Field Forces is charged with the general direction, supervision, coordination, and inspection of matters pertaining to the development of tactics, techniques, and materiel for use by the Army in the field; and with the training and training inspection of individuals and units of the Army in the field.

(2) *Responsibilities.* (i) The Chief of Army Field Forces commands the troops, activities, and installations assigned to Army Field Forces, and is responsible to the Chief of Staff for the following primary functions:

(*a*) Development of tactics and techniques.

(*b*) Determining the effect of new weapons, materiel, and techniques on tactical doctrine and procedures required by individuals and units of the Army in the field, to include the impact on Army participation in joint operations.

(*c*) Formulating Army tactical doctrine and procedures for the employment

of existing and new weapons and equipment used by individuals and units of the Army in the field.

(3) Preparing tables of organization and equipment for units normally a part of the field Army and reviewing all other tables of organization and equipment.

(4) Informing Army personnel of joint boards (established by Chapter II of Joint Action Armed Forces) of Army requirements for the development of doctrines, the evaluation of tactics and techniques; and the evaluation of the adequacy of equipment and training for participation in joint amphibious, airborne, air defense, and tactical air support operations.

(5) Directing such boards and agencies under the control of the Chief of Army Field Forces as are necessary to insure the continued development of new tactics, techniques, and materiel.

(b) Development of weapons and equipment.

(1) Determining requirements for new weapons and techniques to make effective any new tactical concept.

(2) Determining the military needs and recommending the military characteristics for new Army weapons.

(3) Determining the military needs and recommending the military characteristics for new military equipment for the units normally a part of the field Army. The technical services are responsible for preparing military characteristics for that equipment not normally used in the field Army.

(c) Preparation of instructional material.

(1) Preparing manuals on tactics and techniques for publication.

(2) Preparation of training literature, training films, and other training aids.

(3) Supervising the Army Extension Course program.

(4) Submitting to the Department of the Army for approval all doctrinal material containing new policy or major changes of current policy, including recommendations with respect to a new or revised joint doctrine.

(5) Exercising approving authority on the content of all training literature pertaining to the training of individuals and units utilized by the Army in the field, except as requested for review by the Department of the Army and as provided for in (c) (4) of this subdivision.

(d) Teaching of tactical, administrative, and logistical doctrines and techniques.

(1) Directing and controlling the curricula and instruction of tactical doctrine and related techniques in all types of schools in the Army school system, except those listed in subparagraph (3) (i) (r) of this paragraph.

(2) Supervising participation by the Army in instructions in schools and centers of the Navy and Air Force.

(3) Directing and controlling the selection of courses and Army participation in training given in trade schools and industry when the facilities of such agencies are required to train individuals of the Army in the field in specific MOS (Military Occupational Specialty) code numbers. This does not include the responsibility for selection of courses and personnel concerned with the Industrial Mobilization Training Program, which is prescribed in Special Regulations.

(e) Testing of doctrine and techniques and testing of equipment which effects doctrine and techniques.

(f) Supervision of training in all aspects to meet Department of the Army training objectives, including the combat, service, and technical training of the individuals and units of the Army in the field and of the reserve components of the Army on active duty.

(1) Supervising the training of individuals and units of the Army Reserve not on active duty.

(2) Establishing training criteria for, and inspecting and supervising the training of the Army National Guard, to include coordination and approval of plans for field training.

(3) Exercising direction, supervision, coordination, and inspection of all matters pertaining to the organization and training of all units and individuals of the ROTC, as prescribed in §§ 562.1–562.9 of Title 32, C. F. R.

(4) Planning, supervising, and coordinating Army participation in joint exercises and maneuvers as directed by the Department of the Army.

(5) Preparing, coordinating, and supervising the Army mobilization training plans, as directed by the Department of the Army.

(6) Preparing or reviewing tables of allowance which pertain to training activities or which are otherwise assigned to the Chief of Army Field Forces.

(ii) Incident to the execution of his primary functions, the Chief of Army Field Forces is responsible for:

(a) Reviewing and recommending to the Department of the Army the manpower requirements for the conduct of instruction in the schools within his jurisdiction, and for the operation of the Army Field Forces boards; and for other Army Field Forces agencies.

(b) Obtaining bulk authorization of personnel spaces from the Department of the Army for allocation to Army Field Forces headquarters, Army Field Forces boards, and the Artic Test Branch, insuring proper utilization of such personnel spaces, and controlling the assignment of personnel thereto.

(c) Conducting public information activities involving his duties and missions.

(d) Assuring implementation of troop information and education activities in the continental United States within the policy structure established by the Department of the Army.

(iii) In the execution of his responsibilities in the continental United States, the Chief of Army Field Forces will be guided by the principle of decentralization of operations to continental Army commanders; the Commanding General, Military District of Washington; the Commanding General, Army Antiaircraft Command; and the heads of the administrative and technical services or other agencies of the Department of the Army.

(iv) In the continental United States, the Chief of Army Field Forces will issue instructions pertaining to his responsibilities through the continental Army commanders, the Commanding General, Military District of Washington, the Commanding General, Army Antiaircraft Command, and the heads of the administrative and technical services or other Department of the Army agencies for subordinate elements under their command.

(v) Responsibility of the Chief of Army Field Forces in oversea commands is to determine whether or not the training standards and doctrines used in the training establishment in the United States are meeting the requirements of oversea commanders. Instructions from the Chief of Army Field Forces to oversea Army commanders will be issued through the Department of the Army. Training inspections of oversea commands will be made by the Department of the Army or by the Chief of Army Field Forces as the Department of the Army representative, when so directed.

(3) *Use of the term "individuals and units of the Army in the field."* As used herein, this term will be construed to include all units and individuals utilized by the Army except:

(i) Certain operating technical activities which are not utilized normally by the Army in the field, and which are supported by bulk allotment of personnel made to the heads of administrative and technical services and other agencies of the Department of the Army. These are units listed in the Directory and Station List of the United States Army as miscellaneous installations and activities under the following headings:

(a) Agencies.
(b) Alaska Communication System.
(c) Arsenals (including subarsenals and subposts of arsenals)
(d) Boards, as follows (including detachments and test sections)
(1) *Administrative service boards.*
(i) Adjutant General Board.
(ii) Chaplain Board.
(iii) Military Police Board.
(2) *Technical service boards.*
(i) Army Medical Service Board.
(ii) Chemical Corps Board.
(iii) Engineer Board.
(iv) Ordnance Board.
(v) Quartermaster Board.
(vi) Signal Corps Board.
(vii) Transportation Board.
(3) *Joint boards.*
(i) Joint Airborne Troop Board.
(ii) Army membership of—
a. Joint Air Transportation Board.
b. Joint Tactical Air Support Board.
c. Joint Air Defense Board.
d. Joint Amphibious Board.
e. Joint Landing Force Board.
(e) Bureaus.
(f) Centers ((r) of this subdivision).
(g) Depots.
(h) Districts.
(i) Divisions (Engineer)
(j) General Hospitals.
(k) Laboratories.
(l) Libraries, film.
(m) Offices.
(n) Plants and works.
(o) Ports of embarkation.
(p) Projects.
(q) Proving grounds.
(r) Schools, as follows:
(1) Strategic Intelligence School.
(2) Army Security Agency School.

(3) Counter Intelligence Corps School.
(4) Armed Forces Information School.
(5) Armed Forces Staff College.
(6) Army Civilian Training Center.
(7) National War College.
(8) Oversea schools.
(9) Industrial College of the Armed Forces.
(10) United States Armed Forces Institute.
(11) United States Military Academy.
(12) United States Military Academy Preparatory School.
(13) Those medical schools and courses of instruction whose curricula are of nonmilitary nature; also those courses of instruction of other services whose curricula are of a nonmilitary nature.
(14) Joint Military Packaging School.
(s) Reserve Officers' Training Corps.
(t) Services, as follows:
(1) Army Map Service.
(2) Engineer Mechanical Advisory Service.
(3) United States Army and United States Air Force Recruiting Service.
(u) Staging areas.
(v) Stations.
(w) Railroad repair shops.
(x) Miscellaneous units.
(ii) Personnel and units performing functions at the following elements within the Department of the Army Administrative Area:
(a) Secretary of Defense Area.
(b) Secretary of the Army Area.
(c) Army General and Special Staff Area.
(d) Special Field Activities Army Staff Area.
(e) Miscellaneous area.

* * * * *

[SEAL] WM. E. BERGIN,
Major General, U. S. Army,
The Adjutant General.

[F. R. Doc. 53-6680; Filed, July 29, 1953; 8:51 a. m.]

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[Misc. No. 5]

OREGON

ORDER PROVIDING FOR OPENING OF PUBLIC LANDS

JULY 22, 1953.

Pursuant to exchanges made under the provisions of section 8 of the act of June 28, 1934 (48 Stat. 1269) as amended June 26, 1936 (49 Stat. 1976; 43 U. S. C. sec. 315g) the following described lands have been reconveyed to the United States:

WILLAMETTE MERIDIAN

T. 22 S., R. 29 E.
Sec. 22, NE¼SW¼, S½SW¼, S½SE¼,
Sec. 23, SWSW¼,
Sec. 26, W½NW¼.
T. 23 S., R. 29 E.
Sec. 28, SW¼SW¼,
Sec. 29, SE¼SE¼, N½SE¼, SWNE¼,
Sec. 32, NWSE¼, NESW¼, E½NW¼.

The areas described aggregate 680 acres.

The lands described are classified as chiefly valuable for the grazing of livestock and considered suitable for retention in public ownership for administration under the Bureau of Land Management as range lands.

While any application that is filed for the lands will be considered on its merits, it is unlikely that any part of the restored lands will be classified for any use or disposal other than that shown above. No application for the lands may be allowed under the homestead, small tract, desert land, or any other nonmineral public land laws unless the lands have already been classified as valuable or suitable for such type of application, or shall be so classified upon consideration of an application.

This order shall not otherwise become effective to change the status of such lands until 10:00 a. m. on the 35th day after the date of this order. At that time the said lands shall, subject to valid existing rights and the provisions of existing withdrawals, become subject to application, petition, location, and selection as follows:

(a) *Ninety-one day period for preference-right filings.* For a period of 91 days, commencing at the hour and on the day specified above, the public lands affected by this order shall be subject only to (1) application under the homestead or the desert-land laws or the Small Tract Act of June 1, 1938, 52 Stat. 609 (43 U. S. C. 682a) as amended, by qualified veterans of World War II and other qualified persons entitled to preference under the act of September 27, 1944, 58 Stat. 747 (43 U. S. C. 279–284) as amended, subject to the requirements of applicable law, and (2) application under any applicable public-land law, based on prior existing valid settlement rights and preference rights conferred by existing laws or equitable claims subject to allowance and confirmation. Applications under subdivision (1) of this paragraph shall be subject to applications and claims of the classes described in subdivision (2) of this paragraph. All applications filed under this paragraph either at or before 10:00 a. m. on the 35th day after the date of this order shall be treated as though filed simultaneously at that time. All applications filed under this paragraph after 10:00 a. m. on the said 35th day shall be considered in the order of filing.

(b) *Date for non-preference-right filings.* Commencing at 10:00 a. m. on the 126th day after the date of this order, any lands remaining unappropriated shall become subject to such application, petition, location, selection, or other appropriation by the public generally as may be authorized by the public-land laws. All such applications filed either at or before 10:00 a. m. on the 126th day after the date of this order, shall be treated as though filed simultaneously at the hour specified on such 126th day. All applications filed thereafter shall be considered in the order of filing.

A veteran shall accompany his application with a complete photostatic, or other copy (both sides) of his certificate of honorable discharge, or of an official document of his branch of the service which shows clearly his honorable discharge as defined in § 181.36 of Title 43 of the Code of Federal Regulations, or constitutes evidence of other facts upon which the claim for preference is based and which shows clearly the period of service. Other persons claiming credit for service of veterans must furnish like proof in support of their claims. Persons asserting preference rights, through settlement or otherwise, and those having equitable claims, shall accompany their applications by duly corroborated statements in support thereof, setting forth in detail all facts relevant to their claims.

Applications for these lands, which shall be filed in the Land Office, Portland, Oregon, shall be acted upon in accordance with the regulations contained in § 295.8 of Title 43 of the Code of Federal Regulations and Part 296 of that title, to the extent that such regulations are applicable. Applications under the homestead laws shall be governed by the regulations contained in Parts 166 to 170, inclusive, of Title 43 of the Code of Federal Regulations, and applications under the desert-land laws and the said Small Tract Act of June 1, 1938, shall be governed by the regulations contained in Parts 232 and 257, respectively, of that title.

Inquiries concerning these lands shall be addressed to: Land Office, Portland 18, Oregon.

JAMES F DOYLE,
Assistant Regional Administrator

[F. R. Doc. 53-6657; Filed, July 29, 1953; 8:45 a. m.]

CALIFORNIA

CLASSIFICATION ORDER

JULY 24, 1953.

1. Pursuant to the authority delegated to me by the Regional Administrator, Region II, Bureau of Land Management, by Order No. 1, Amendment No. 2, dated January 29, 1953 (18 F R. 23) I hereby classify under the Small Tract Act of June 1, 1938 (52 Stat. 609), as amended July 14, 1945 (59 Stat. 467, 43 U. S. C. 682a) as hereinafter indicated, the following described lands in the Los Angeles land district, embracing approximately 240 acres,

CALIFORNIA SMALL TRACT CLASSIFICATION No. 382

For lease and sale for homesite purposes only,

T. 9 N., R. 1 E., S. B. M.,
Sec. 20, S½N½, N½SE¼.

The lands are located in western San Bernardino County, California, less than one-quarter mile south of State Highway U. S. 66 near the town of Daggett and approximately eight miles east of Barstow. Climatic conditions are typical of the Mojave Desert with mild winters, high summer temperatures, low rainfall and low humidity. Elevation is approximately 2000 feet above sea level and the terrain is relatively level.

2. As to applications regularly filed prior to 11:00 a. m., April 7, 1950, and are for the type of site for which the lands are classified, this order shall become effective upon the date it is signed.

3. This order shall not otherwise become effective to change the status of such lands until 10:00 a. m. on the 35th day after the date of this order. At that time the said lands shall, subject to valid existing rights and the provisions of existing withdrawals, become subject to applications under the Small Tract Act as follows:

(a) *Ninety-one day period for preference-right filings.* For a period of 91 days, commencing at the hour and on the day specified above, the public lands affected by this order shall be subject only to application under the Small Tract Act of June 1, 1938, 52 Stat. 609 (43 U. S. C. 682a) as amended, by qualified veterans of World War II, subject to the requirements of applicable law. All applications filed under this paragraph either at or before 10:00 a. m. on the 35th day after the date of this order shall be treated as though filed simultaneously at that time. All applications filed under this paragraph after 10:00 a. m. on the said 35th day shall be considered in the order of filing.

(b) *Date for non-preference-right filings.* Commencing at 10:00 a. m. on the 126th day after the date of this order, any lands remaining unappropriated shall become subject to disposal under the Small Tract Act only. All such applications filed either at or before 10:00 a. m. on the 126th day after the date of this order, shall be treated as though filed simultaneously at the hour specified on such 126th day. All applications filed thereafter shall be considered in the order of filing.

4. A veteran shall accompany his application with a complete photostatic, or other copy (both sides) of his certificate of honorable discharge, or of an official document of his branch of the service which shows clearly his honorable discharge as defined in § 181.36 of Title 43 of the Code of Federal Regulations, or constitutes evidence of other facts upon which the claim for preference is based and which shows clearly the period of service. Other persons claiming credit for service of veterans must furnish like proof in support of their claims. Persons asserting preference rights, through settlement or otherwise, and those having equitable claims, shall accompany their application by duly corroborated statements in support thereof, setting forth in detail all facts relevant to their claims.

5. All of the lands will be leased in tracts of approximately five acres, each tract being approximately 660 feet in north-south dimension and 330 feet in east-west dimension and forming aliquot parts of the official survey of the section.

6. Preference right leases referred to in paragraph 2 will be issued only if the tract applied for conforms to or is amended to conform to the area, dimensions and orientation specified in paragraph 5.

7. Leases will be for a period of three years at an annual rental of $5.00 payable for the entire lease period in advance of the issuance of the lease. Leases will contain an option to purchase clause at the appraised value of $175.00 per tract. Application to purchase may be filed during the term of the lease but not more than 30 days prior to the expiration of one year from the date of the lease issuance.

8. Tracts will be subject to all existing rights-of-way and to rights-of-way 33 feet in width along the boundaries thereof for road purposes and public utilities. Such rights-of-way may be utilized by the Federal Government, or the State, County or municipality in which the tract is situated, or by any agency thereof. The rights-of-way may, in the discretion of the authorized officer of the Bureau of Land Management, be definitely located prior to the issuance of the patent. If not so located, they may be subject to location after patent is issued.

9. All inquiries relating to these lands should be addressed to the Manager, Land Office, Los Angeles, California.

E. I. ROWLAND,
Regional Chief,
Division of Lands.

[F. R. Doc. 53-6658; Filed, July 29, 1953; 8:46 a. m.]

DEPARTMENT OF COMMERCE

Civil Aeronautics Administration

CERTAIN REGIONAL OFFICES

TRANSFER OF FUNCTIONS

Notice is hereby given that all functions of the Civil Aeronautics Administration Regional Offices formerly located at Atlanta, Georgia; Chicago, Illinois; and Seattle, Washington, have been assumed by the Regional Offices located at Jamaica, Long Island, New York; Fort Worth, Texas; Kansas City, Missouri; and Los Angeles, California. Addresses of the new Regional Offices and the areas over which they have jurisdiction are specified in the Notice on Organization and Functions, Amendment 16, section 42, published on May 14, 1953, in 18 F. R. 2798.

[SEAL] JOSEPH D. BLATT,
Acting Administrator of
Civil Aeronautics.

[F. R. Doc. 53-6631; Filed, July 29, 1953; 8:45 a. m.]

FEDERAL COMMUNICATIONS COMMISSION

[Docket Nos. 10476, 10477]

KTBS, INC. AND INTERNATIONAL BROADCASTING CORP.

ORDER SCHEDULING FURTHER HEARING

In the matter of KTBS, Inc., Shreveport, Louisiana, Docket No. 10476, File No. BPCT-464; International Broadcasting Corporation, Shreveport, Louisiana, Docket No. 10477, File No. BPCT-505; for construction permits for new commercial television stations.

The Commission having under consideration (1) a petition filed July 9, 1953, by KTBS, Inc., for subpoenas and for subpoenas duces tecum; (2) a motion filed July 13, 1953, by International Broadcasting Corporation requesting pursuant to the provisions of § 1.821 (b) of the Commission's Rules that the request for subpoenae and for subpoenas duces tecum be refused and that an order be issued directing that depositions sought to be taken by KTBS, Inc., pursuant to notice served July 9, 1953, not be taken; and (3) a petition filed July 16, 1953, by KTBS, Inc., for modification of the Order Controlling Conduct of Hearing; and

It appearing that in accordance with an understanding reached at the close of the June 26, 1953, hearing, another conference would be held during the week of August 3, 1953, for further clarification of the issues after the submission by the applicants on July 24, 1953, of detailed programming proposals; and

It further appearing that matters relating to the taking of depositions, the necessity of the issuance of subpoenas and modification of the Order Controlling Conduct of Hearing may be resolved at such conference without delaying the conduct of the hearing and without detriment to either applicant;

It is ordered, This the 24th day of July 1953 that further hearing in the above-entitled proceeding be held August 3, 1953, beginning at 10:00 a. m. in the offices of the Commission, Washington, D. C., for the purposes above indicated.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] T. J. SLOWIE,
Secretary.

[F. R. Doc. 53-6681; Filed, July 29, 1953; 8:52 a. m.]

[Docket Nos. 10534, 10535]

SOUTH BEND BROADCASTING CORP. AND MICHIANA TELECASTING CORP.

ORDER CONTINUING HEARING

In re applications of South Bend Broadcasting Corporation, South Bend, Indiana, Docket No. 10534, File No. BPCT-1012; Michiana Telecasting Corporation, Notre Dame, Indiana, Docket No. 10535, File No. BPCT-1431, for construction permits for new television stations.

There are pending before the Commission (1) a petition by Michiana Telecasting Corporation to strike certain hearing issues, (2) a petition by South Bend Broadcasting Corporation to enlarge hearing issues, and (3) pleadings filed in opposition to both petitions. The interest of orderly administrative procedure will be served by the postponement of the further hearings now scheduled for July 24, 1953, until the Commission has had an opportunity to act on the petitions referred to;

It is ordered, This the 23d day of July 1953, that the further hearing in this proceeding presently scheduled to be held July 24, 1953, be and the same is continued to a date to be announced after the Commission has had an opportunity to act on the petitions to amend the issues.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] T. J. SLOWIE,
Secretary.

[F. R. Doc. 53-6682; Filed, July 29, 1953; 8:52 a. m.]

FEDERAL POWER COMMISSION

[Docket No. G-1988]

CITIES SERVICE GAS CO.

ORDER DENYING REQUEST FOR SHORTENED PROCEDURE AND FIXING DATE OF HEARING

On June 30, 1952, Cities Service Gas Company (Applicant) a Delaware corporation with its principal place of business in Oklahoma City, Oklahoma, filed an application and supplement thereto on August 15, 1952, for (1) a certificate of public convenience and necessity pursuant to section 7 of the Natural Gas Act authorizing the construction and operation of approximately 2,700 feet of 8-inch pipe line from a point on its 26-inch pipe line in Ford County, Kansas, to a point on the 26-inch and/or 24-inch gas pipe line of Natural Gas Pipeline Company of America in Ford County, Kansas, and (2) authorization to make a temporary sale of natural gas to Natural Gas Pipeline Company of America through facilities described in (1) above.

On July 14, 1952, the Commission granted temporary authorization for the sale and delivery of 16,500 Mcf daily to Natural Gas Pipeline Company of America through September 30, 1952.

The application recites that it is intended the interconnecting facilities requested by the Applicant will remain in place as a permanent interconnection except for the blinding-off and removal of gauges from the metering facilities, and such facilities will be in place in order that future deliveries of gas may be made by each of the companies to the other under such terms and conditions as the parties may agree upon. It appears that the two companies have not been able to negotiate a contract with reference to the exchange of natural gas as contemplated by the Applicant. The application is on file with the Commission and open to public inspection, public notice thereof having been given, including publication in the FEDERAL REGISTER on July 17, 1952 (17 F. R. 6572)

The Commission finds: This proceeding is not a proper one for disposition under the provisions of § 1.32 (b) (18 CFR 1.32 (b)) of the Commission's rules of practice and procedure.

The Commission orders:

(A) The request that the proceeding be disposed of under the provisions of § 1.32 (b) (18 CFR 1.32 (b)) of the Commission's rules of practice and procedure be and the same is hereby denied.

(B) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure a hearing be held on the 14th day of September 1953, at 10:00 a. m., e. d. s. t., in the Hearing Room of the Federal Power Commission, 441 G Street NW., Washington, D. C., concerning the matters involved in and the issues presented by the application.

(C) Interested State commissions may participate as provided by §§ 1.8 and 1.37 (f) (18 CFR 1.8 and 1.37 (f)) of the said rules of practice and procedure.

Adopted: July 23, 1953.

Issued: July 24, 1953.

By the Commission.

[SEAL] LEON M. FUQUAY, *Secretary.*

[F. R. Doc. 53-6674; Filed, July 29, 1953; 8:49 a. m.]

[Docket No. G-2145]

UNITED GAS IMPROVEMENT CO.

ORDER FIXING DATE OF HEARING

On April 1, 1953, United Gas Improvement Company (Applicant) a Pennsylvania corporation having its principal place of business at Philadelphia, Pennsylvania, filed an application, which was supplemented on June 26, 1953, for an order pursuant to section 7 (a) of the Natural Gas Act directing The Manufacturers Light and Heat Company (Manufacturers) to establish a second physical connection of its natural-gas transportation facilities with the distribution mains of Applicant's Reading Division, without direction to sell any additional quantities of natural gas through such connection, and for a certificate of public convenience and necessity pursuant to section 7 of the Natural Gas Act, authorizing the construction and operation of certain natural-gas transmission facilities, subject to the jurisdiction of the Commission, as described in the application, as supplemented, on file with the Commission and open to public inspection.

On May 4, 1953, Manufacturers filed its answer to said application stating that it has no objection to the establishment of the second physical connection requested by Applicant, provided that Applicant constructs a lateral pipe line to a suitable point of connection with Manufacturers' transportation facilities and provided that Manufacturers' obligations to deliver natural gas are not increased thereby.

The Commission finds: This proceeding is a proper one for disposition under the provisions of § 1.32 (b) (18 CFR 1.32 (b)) of the Commission's rules of practice and procedure, Applicant having requested that its application be heard under the shortened procedure provided by the aforesaid rule for noncontested proceedings, and no request to be heard, protest, or petition raising an issue of substance having been filed subsequent to the giving of due notice of the filing of the application, including publication in the FEDERAL REGISTER on April 18, 1953 (18 F. R. 2257-2258)

The Commission orders:

(A) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act, and the Commission's rules of practice and procedure, a hearing be held on Aug. 13, 1953, at 9:30 a. m., e. d. s. t., in the Hearing Room of the Federal Power Commission, 441 G Street NW., Washington, D. C., concerning the matters involved and the issues presented by the application, as supplemented, herein: *Provided, however,* That the Commission may, after a noncontested hearing, dispose of the proceeding pursuant to the provisions of § 1.32 (b) of the Commission's rules of practice and procedure.

(B) Interested State commissions may participate as provided by §§ 1.8 and 1.37 (f) (18 CFR 1.8 and 1.37 (f)) of the said rules of practice and procedure.

Adopted: July 23, 1953.

Issued: July 24, 1953.

By the Commission.

[SEAL] LEON M. FUQUAY, *Secretary.*

[F R. Doc. 53-6675; Filed, July 29, 1953; 8:50 a. m.]

[Docket No. G-2217]

NORTHERN NATURAL GAS CO.

ORDER SUSPENDING PROPOSED CHANGES IN RATES AND SERVICES AND FIXING DATE FOR HEARING

On June 26, 1953, Northern Natural Gas Company (Northern) filed with the Commission proposed Fourth Revised Sheets Nos. 5, 12, and 13 to its FPC Gas Tariff, First Revised Volume No. 2, and proposed that such revised sheets become effective on July 27, 1953. Northern also filed for "information" purposes Fourth Revised Sheet No. 14 to its FPC Gas Tariff, First Revised Volume No. 2, which it proposes to make effective as of August 27, 1953.

Fourth Revised Sheets Nos. 5, 12, 13, and 14 are filed to supersede Northern's Third Revised Sheets Nos. 5, 12, 13, and 14, which have been in effect since November 27, 1952, by virtue of an order of the United States Court of Appeals for the Eighth Circuit entered December 18, 1952, in State Corporation Commission v. F P C., No. 14704, and Northern Natural Gas Co. v. F P C., Nos. 14706, 14733, 14743, staying, subject to the terms and conditions therein stated, Opinion No. 228 and order issued June 11, 1952, and Opinion No. 233 and order issued July 30, 1952.

By said Fourth Revised Sheets Northern proposes to increase its rates and charges for sales of natural gas approximately $13,485,500 per year, which is an increase of 19.5 percent, based on estimated sales for the year 1954.

From an examination of Northern's proposed Fourth Revised Sheets Nos. 5, 12, 13, and 14 and the data submitted in support theref, it appears that the form of the rate schedules and rates and charges contained therein are predicated on claims advanced by Northern, and decided by the Commission adversely to Northern, in In the Matter of Northern Natural Gas Company, Docket Nos. G-1382, G-1533, and G-1607, Opinion Nos. 228 and 228-A, respectively, issued June 11, 1952, and September 26, 1952, and in In the Matter of Northern Natural Gas Company, Docket No. G-1881, Opinion No. 233, issued July 30, 1952.

For example, Northern proposes, as it did in these earlier proceedings, to establish a Rate Schedule IND–1 (Fourth Revised Sheet No. 13) purportedly for sales of natural gas for resale for industrial use only, which Northern contends now, as it did in the earlier proceedings, is not subject to suspension under section 4 (e) of the Natural Gas Act.[1] Also, Northern proposes, as it did in these earlier proceedings, to establish a Rate Schedule IND–2 (Fourth Revised Sheet No. 14) purportedly for sales of natural gas to Northern's utility customers for their own use, which Northern contends, as it did in the earlier Northern rate proceedings, is not subject to the Commission's jurisdiction and is, therefore, filed for purposes of "information" only.

In Opinion Nos. 228 and 233 the Commission held that Northern makes no sales of natural gas to which such rate schedules as the proposed IND–1 and IND–2 rate schedules could apply, and that such schedules were subject to the Commission's suspension power since they actually related to sales of natural gas for resale. There are presently no allegations by Northern or showing of changes in the facts and circumstances upon which the Commission's findings were based in the earlier Northern proceedings. In fact, Northern states that the "only change proposed" other than an editorial change," is an increase in the level of rates."

In addition to predicating the proposed rates and charges and rate schedules on claims previously advanced and decided adversely to its contentions by the Commission, it also appears that Northern's proposed increase in rates and charges, in good measure, rests upon claimed or anticipated increases in Northern's cost of gas purchased which appear to be speculative and, admittedly, will not be incurred, if at all, at the proposed effective dates of the revised sheets.

The increased rates and charges provided by said Fourth Revised Sheets, therefore, have not been shown to be justified and may be unjust, unreasonable, unduly discriminatory or preferential, and may place an undue burden upon the ultimate consumers of natural gas.

As required by § 154.16 of the Commission's regulations under the Natural Gas Act, copies of said Fourth Revised Sheets have been sent to each customer of Northern which would be affected thereby. Nineteen customer utilities, the States of Minnesota, and Iowa, the Kansas State Corporation Commission, and the Cities of Minneapolis and St. Paul, Minnesota, and Des Moines, Iowa, have filed protests and objections to the proposed increase.

On July 13, 1953, Northern filed a petition to limit the suspension period, if any, to December 1, 1953. Northern states that deliveries from one of its supply sources, Permian Basin Pipeline Company, are scheduled to commence on December 1, 1953, and that at such time its claimed "* * * annual deficiency in sales for resale of $12,617.324 based on 1954 costs" will commence and, therefore, requests that the entire rate increase should be permitted to go into effect under bond at that time subject to refund.

It does not appear, however, that suspension for a maximum period of less than five months as requested by Northern is justified even if the increased rates and charges were to be made effective at December 1, 1953, subject to refund and under bond.

In the first place, the proposed increased rates and charges which Northern would make effective at December 1, 1953, are not based on Northern's actual past experience adjusted for known changes which are measurable with reasonable accuracy, but rather on Northern's anticipations of what its experience might be in the year 1954, for the proposed increased rates are based on estimates for such year, and on claims which have twice been decided adversely to Northern's contentions. Thus it cannot now be foretold when and to what extent Northern will start realizing its claimed annual deficiency in revenues from sales for resale.

In the second place, the authority to place rates in effect subject to refund and bond on motion of the natural-gas company prior to the conclusion of the suspension proceedings does not itself provide justification or ground for suspension for less than the maximum period of five months.

The purpose of the suspension power is to give the Commission time to investigate the reasonableness of the proposed increase before consumers are called upon to pay increased rates, even under bond and subject to refund, without violating constitutional prohibitions against confiscation of property. Congress believed that five months was a reasonable period for that purpose and it has been held to be consistent with the constitutional prohibition referred to. Hope Natural Gas Co. v. F P. C. (C. A. 4, 1952), 196 F. 2d 803, 808–809.

The Commission does not wish to be understood as saying that suspension for less than the maximum period of five months may not be justified at times; nor that every effort should not be made to dispose of rate suspension cases in the shortest possible time.

However, generally, where it appears that the maximum period of five months might be required to investigate the proposed increase, suspension for a maximum period of less than five months would not be justified. In this case, the prospects of concluding the investigation in less than five months is dimmed by the fact that the increase, in large part, is based on estimates for 1954 rather than actual past experience adjusted for known changes which are measurable with reasonable accuracy.

Northern cites some instances where the Interstate Commerce Commission has exercised its authority to suspend for less than the maximum period, but it is noteworthy that it has done so in a mere handful of cases in many decades. And where it has done so, investigation discloses that that Commission acted on the expectation that the investigation could be completed in the limited suspension period.

The Commission finds:

(1) It is necessary and proper in the public interest and to aid in the enforcement of the provisions of the Natural Gas Act that the Commission enter upon a hearing pursuant to the authority contained in section 4 of the act, concerning the lawfulness of Northern's FPC Gas Tariff, First Revised Volume No. 2, as proposed to be amended by Fourth Revised Sheets Nos. 5, 12, 13, and 14, and that said Fourth Revised Sheets be suspended as hereinafter provided and the use thereof be deferred pending hearing and decision herein.

(2) Northern's petition to place its proposed rate increase in effect not later than December 1, 1953, should be denied.

The Commission orders:

(A) Pursuant to the authority contained in section 4 of the Natural Gas Act, a public hearing be held commencing October 5, 1953, at 10:00 a. m., e. s. t., in a Hearing Room of the Federal Power Commission, 441 G Street NW., Washington, D. C., concerning the lawfulness of rates, charges, classifications, and services contained in Northern's FPC Gas Tariff, First Revised Volume No. 2, as proposed to be amended by Fourth Revised Sheets Nos. 5, 12, 13, and 14.

(B) Pending such hearing and decision thereon, said Fourth Revised Sheets be and the same are hereby suspended and the use of Fourth Revised Sheets Nos. 5, 12, and 13 deferred until December 27, 1953, and of Fourth Revised Sheet No. 14 to January 27, 1954, unless otherwise ordered by the Commission, and until such further time thereafter as said Fourth Revised Sheets may be made effective in the manner prescribed by the Natural Gas Act.

(C) Northern's petition to limit the period of suspension to December 1, 1953, be and the same is hereby denied.

(D) At the hearing Northern shall first present and complete its case-in-chief before cross-examination is undertaken.

(E) Northern shall reduce the testimony it proposes to present at the hearing to writing and not later than September 28, 1953, shall serve upon all parties, including Commission Staff Counsel, copies of the testimony and exhibits proposed to be offered at the hearing by Northern.

(F) Interested State commissions may participate as provided by §§ 1.8 and 1.37 (f) (18 CFR 1.8 and 1.37 (f)) of the Commission's rules of practice nad procedure.

Adopted: July 23, 1953.
Issued: July 24, 1953.

By the Commission.

[SEAL] LEON M. FUQUAY, *Secretary.*

[F. R. Doc. 53-6576; Filed, July 29, 1953; 8:50 a. m.]

[1] In pertinent part, section 4 (e) provides that the Commission "shall not have authority to suspend the rate, charge, classification, or services for the sale of natural gas for resale for industrial use only."

[Project No. 2135]

MONTANA POWER CO.

NOTICE OF APPLICATION FOR PRELIMINARY PERMIT

JULY 23, 1953.

Public notice is hereby given that The Montana Power Company, of Butte, Montana, has filed application under the Federal Power Act (16 U. S. C. 791a–825r) for preliminary permit for proposed water-power Project No. 2135 to be located on Flathead River in Lake County, Montana, approximately four river miles downstream from the powerhouse of its Project No. 5, near Polson, and consisting of a concrete dam located at the so-called Buffalo Rapids site, a reservoir with normal water surface at elevation 2705, and a powerhouse with an installed capacity of about 80,000 horsepower and provision for additional capacity as warranted by future upstream reservoir development, the generating plant to be connected to the transmission system through a 100-kv transmission line. The preliminary permit, if issued, shall be for the sole purpose of maintaining priority of application for a license under the terms of the Federal Power Act for the proposed project.

Protests or petitions to intervene may be filed with the Federal Power Commission, Washington, D. C., in accordance with the rules of practice and procedure of the Commission (18 CFR 1.8 or 1.10) on or before the 3d day of September 1953. The application is on file with the Commission for public inspection.

[SEAL] LEON M. FUQUAY,
Secretary.

[F. R. Doc. 53-6663; Filed, July 29, 1953; 8:47 a. m.]

GENERAL SERVICES ADMINISTRATION

SECRETARY OF DEFENSE

DELEGATION OF AUTHORITY WITH RESPECT TO SPACE OCCUPIED IN CERTAIN FEDERAL BUILDINGS BY DEPARTMENT OF DEFENSE

1. Pursuant to the authority vested in me by Reorganization Plan No. 18 of 1950, authority is hereby delegated to the Secretary of Defense to perform all functions with respect to the assignment and reassignment of space in the following buildings:

Dravo Building, Wilmington, Del.
39 Whitehall, New York, N. Y.
311 Arsenal Street, San Antonio, Tex.
50 Fell Street, San Francisco, Calif.

2. The authority herein contained may be redelegated in accordance with section 3 (b) of the aforesaid Reorganization Plan.

3. This delegation of authority shall become effective as of July 1, 1953.

Dated: July 23, 1953.

RUSSELL FORBES,
Acting Administrator.

[F. R. Doc. 53-6664; Filed, July 29, 1953; 8:47 a. m.]

INTERSTATE COMMERCE COMMISSION

[4th Sec. Application 28300]

IRON AND STEEL ARTICLES FROM OFFICIAL, WESTERN TRUNK-LINE AND SOUTHWESTERN TERRITORIES AND MINNEQUA, COLO., TO TEXAS POINTS

APPLICATION FOR RELIEF

JULY 24, 1953.

The Commission is in receipt of the above-entitled and numbered application for relief from the long-and-short-haul provision of section 4 (1) of the Interstate Commerce Act.

Filed by F C. Kratzmeir, Agent, for carriers parties to schedules listed below.

Commodities involved: Iron and steel articles, carloads.

From. Points in official, western trunk-line, and southwestern territories; also Minnequa, Colo.

To: Pasadena, Deepwater, Deer Park, and Webster, Tex.

Grounds for relief: Competition with rail carriers, circuitous routes, to maintain grouping, additional destinations.

Schedules filed containing proposed rates: F C. Kratzmeir, Agent, I. C. C. No. 3899, supp. 50; F C. Kratzmeir, Agent, I. C. C. No. 3443, supp. 177.

Any interested person desiring the Commission to hold a hearing upon such application shall request the Commission in writing so to do within 15 days from the date of this notice. As provided by the general rules of practice of the Commission, Rule 73, persons other than applicants should fairly disclose their interest, and the position they intend to take at the hearing with respect to the application. Otherwise the Commission, in its discretion, may proceed to investigate and determine the matters involved in such application without further or formal hearing. If because of an emergency a grant of temporary relief is found to be necessary before the expiration of the 15-day period, a hearing, upon a request filed within that period, may be held subsequently.

By the Commission.

[SEAL] GEORGE W LAIRD,
Acting Secretary.

[F. R. Doc. 53-6625; Filed, July 28, 1953; 8:47 a. m.]

[4th Sec. Application 28301]

SOFT COAL OR BITUMINOUS FINE COAL FROM ILLINOIS, INDIANA AND WESTERN KENTUCKY, TO CHEMOLITE SIDING, MINN.

APPLICATION FOR RELIEF

JULY 24, 1953.

The Commission is in receipt of the above-entitled and numbered application for relief from the long-and-short-haul provision of section 4 (1) of the Interstate Commerce Act.

Filed by R. G. Raasch, Agent, for the Atchison, Topeka and Santa Fe Railway Company, and other carriers.

Commodities involved: Soft coal or bituminous fine coal, carloads.

From: Mines in Illinois, Indiana, and western Kentucky.

To: Chemolite Siding, Minn.

Grounds for relief: Competition with rail carriers, circuitous routes, to meet threatened competition with natural gas.

Schedules filed containing proposed rates: AT&SF tariff I. C. C. No. 14708, supp. 7 B&O, tariff I. C. C. No. C&C 3040, supp. 16; C&EI, tariff I. C. C. No. 2, supp. 154; C&IM, tariff I. C. C. No. B–336, supp. 34; C&NW tariff I. C. C. No. 11208, supp. 17 CB&Q, tariff I. C. C. No. 20331, supp. 42; CI&L, tariff I. C. C. No 4798 supp. 22; CMStP&P tariff I. C. C. No. B–7717, supp. 18; CRI&P, tariff I. C. C. No. C–13446, supp. 16; GM&O, tariff I. C. C. No. 262, supp. 12; IC RR, tariff I. C. C. No. E–1869, supp. 27; M&StL, tariff I. C. C. No. 2, supp. 69; MP, tariff I. C. C. No. A–10201, supp. 34; NYC, tariff I. C. C. No. 1306, supp. 32; P RR, tariff I. C. C. No. 3210, supp. 15; Wabash, tariff I. C. C. No. 7649, supp. 36; C. A. Spaninger, Agent, tariff I. C. C. No. 1224, supp. 46.

Any interested person desiring the Commission to hold a hearing upon such application shall request the Commission in writing so to do within 15 days from the date of this notice. As provided by the general rules of practice of the Commission, Rule 73, persons other than applicants should fairly disclose their interest, and the position they intend to take at the hearing with respect to the application. Otherwise the Commission, in its discretion, may proceed to investigate and determine the matters involved in such application without further or formal hearing. If because of an emergency a grant of temporary relief is found to be necessary before the expiration of the 15-day period, a hearing, upon a request filed within that period, may be held subsequently.

By the Commission.

[SEAL] GEORGE W LAIRD,
Acting Secretary.

[F. R. Doc. 53-6626; Filed, July 28, 1953; 8:47 a. m.]

[4th Sec. Application 28302]

WOODPULP FROM SOUTHERN TERRITORY TO ELLICOTT CITY, MD.

APPLICATION FOR RELIEF

JULY 27, 1953.

The Commission is in receipt of the above-entitled and numbered application for relief from the long-and-short-haul provision of section 4 (1) of the Interstate Commerce Act.

Filed by R. E. Boyle, Jr., Agent, for carriers parties to schedule listed below.

Commodities involved: Woodpulp, not powdered, N. O. I. B. N., carloads.

From: Points in southern territory.

To: Ellicott City, Md.

Grounds for relief: Competition with rail carriers, circuitous routes, to apply rates constructed on the basis of the short-line distance formula, additional destination.

Schedules filed containing proposed rates: C. A. Spaninger, Agent, tariff I. C. C. No. 1260, supp. 42.

Any interested person desiring the Commission to hold a hearing upon such application shall request the Commission in writing so to do within 15 days from the date of this notice. As provided by the general rules of practice of the Commission, Rule 73, persons other than applicants should fairly disclose their interest, and the position they intend to take at the hearing with respect to the application. Otherwise the Commission, in its discretion, may proceed to investigate and determine the matters involved in such application without further or formal hearing. If because of an emergency a grant of temporary relief is found to be necessary before the expiration of the 15-day period, a hearing, upon a request filed within that period, may be held subsequently.

By the Commission.

[SEAL] GEORGE W LAIRD,
Acting Secretary.

[F. R. Doc. 53-6667; Filed, July 29, 1953; 8:48 a. m.]

[4th Sec. Application 28303]

POTATOES FROM MAINE AND NEW BRUNSWICK TO TAMAQUA, PA.

APPLICATION FOR RELIEF

JULY 27, 1953.

The Commission is in receipt of the above-entitled and numbered application for relief from the long-and-short-haul provision of section 4 (1) of the Interstate Commerce Act.

Filed by C. W Boin and I. N. Doe, Agents, for carriers parties to schedule listed below.

Commodities involved: Potatoes, carloads.

From: Points in Maine and New Brunswick.

To: Tamaqua, Pa.

Grounds for relief: Competition with rail carriers, circuitous routes, to maintain grouping.

Schedules filed containing proposed rates: I. N. Doe, Agent, tariff I. C. C. No. 611, supp. 13.

Any interested person desiring the Commission to hold a hearing upon such application shall request the Commission in writing so to do within 15 days from the date of this notice. As provided by the general rules of practice of the Commission, Rule 73, persons other than applicants should fairly disclose their interest, and the position they intend to take at the hearing with respect to the application. Otherwise the Commission, in its discretion, may proceed to investigate and determine the matters involved in such application without further or formal hearing. If because of an emergency a grant of temporary relief is found to be necessary before the expiration of the 15-day period, a hearing, upon a request filed within that period, may be held subsequently.

By the Commission.

[SEAL] GEORGE W LAIRD,
Acting Secretary.

[F. R. Doc. 53-6668; Filed, July 29, 1953; 8:48 a. m.]

[4th Sec. Application 28304]

WROUGHT IRON PIPE FROM INDIAN ORCHARD, MASS., TO SOUTHWEST

APPLICATION FOR RELIEF

JULY 27, 1953.

The Commission is in receipt of the above-entitled and numbered application for relief from the long-and-short-haul provision of section 4 (1) of the Interstate Commerce Act.

Filed by F. C. Kratzmeir, Agent, for carriers parties to schedule listed below.

Commodities involved: Steel or wrought iron pipe and related articles, carloads.

From: Indian Orchard, Mass.

To: Points in southwestern territory.

Grounds for relief: Competition with rail carriers, circuitous routes, to maintain grouping, to apply rates constructed on the basis of the short-line distance formula.

Schedules filed containing proposed rates: F. C. Kratzmeir, Agent, tariff I. C. C. No. 3982, supp. 36.

Any interested person desiring the Commission to hold a hearing upon such application shall request the Commission in writing so to do within 15 days from the date of this notice. As provided by the general rules of practice of the Commission, Rule 73, persons other than applicants should fairly disclose their interest, and the position they intend to take at the hearing with respect to the application. Otherwise the Commission, in its discretion, may proceed to investigate and determine the matters involved in such application without further or formal hearing. If because of an emergency a grant of temporary relief is found to be necessary before the expiration of the 15-day period, a hearing, upon a request filed within that period, may be held subsequently.

By the Commission.

[SEAL] GEORGE W. LAIRD,
Acting Secretary.

[F. R. Doc. 53-6669; Filed, July 29, 1953; 8:48 a. m.]

[4th Sec. Application 28305]

RAYON CORD TIRE FABRIC FROM LEWISTOWN, PA., TO MEMPHIS AND NATCHEZ, MISS.

APPLICATION FOR RELIEF

JULY 27, 1953.

The Commission is in receipt of the above-entitled and numbered application for relief from the long-and-short-haul provision of section 4 (1) of the Interstate Commerce Act.

Filed by C. W Boin, Agent, for carriers parties to his tariff I. C. C. No. A-968, pursuant to fourth-section order No. 17220.

Commodities involved: Rayon cord tire fabric, carloads.

From: Lewistown, Pa.

To: Memphis and Natchez, Miss.

Grounds for relief: Competition with rail carriers, circuitous routes.

Any interested person desiring the Commission to hold a hearing upon such application shall request the Commission in writing so to do within 15 days from the date of this notice. As provided by the general rules of practice of the Commission, Rule 73, persons other than applicants should fairly disclose their interest, and the position they intend to take at the hearing with respect to the application. Otherwise the Commission, in its discretion, may proceed to investigate and determine the matters involved in such application without further or formal hearing. If because of an emergency a grant of temporary relief is found to be necessary before the expiration of the 15-day period, a hearing, upon a request filed within that period, may be held subsequently.

By the Commission.

[SEAL] GEORGE W LAIRD,
Acting Secretary.

[F. R. Doc. 53-6670; Filed; July 29, 1953; 8:49 a. m.]

[4th Sec. Application 28306]

FERRO-PHOSPHOROUS FROM ROCKDALE, MT. PLEASANT, AND SIGLO, TENN., TO BALLSTON SPA, N. Y.

APPLICATION FOR RELIEF

JULY 27, 1953.

The Commission is in receipt of the above-entitled and numbered application for relief from the long-and-short-haul provision of section 4 (1) of the Interstate Commerce Act.

Filed by R. E. Boyle, Jr., Agent, for carriers parties to schedule listed below.

Commodities involved: Ferro-phosphorous, carloads.

From: Rockdale, Mt. Pleasant, and Siglo, Tenn.

To: Ballston Spa, N. Y.

Grounds for relief: Competition with rail carriers, circuitous routes, to apply rates constructed on the basis of the short-line distance formula.

Schedules filed containing proposed rates: C. A. Spaninger, Agent, tariff I. C. C. No. 1376, supp. 2.

Any interested person desiring the Commission to hold a hearing upon such application shall request the Commission in writing so to do within 15 days from the date of this notice. As provided by the general rules of practice of the Commission, Rule 73, persons other than applicants should fairly disclose their interest, and the position they intend to take at the hearing with respect to the application. Otherwise the Commission, in its discretion, may proceed to investigate and determine the matters involved in such application without further or formal hearing. If because of an emergency a grant of temporary relief is found to be necessary before the expiration of the 15-day period, a hearing, upon a request filed within that period, may be held subsequently.

By the Commission.

[SEAL] GEORGE W. LAIRD,
Acting Secretary.

[F. R. Doc. 53-6671; Filed, July 29, 1953; 8:49 a. m.]

OFFICE OF DEFENSE MOBILIZATION

CERTAIN AREAS

DETERMINATION OF CRITICAL DEFENSE HOUSING AREAS

JULY 27, 1953.

Upon review of specific data presented to the Secretary of Defense and the Director of the Office of Defense Mobilization for the areas designated as

Areas and Geographic Definitions

Camp Rucker, Ala.. Coffee and Dale Counties, Ala.

Flagstaff, Ariz.. That part of Supervisorial District 1 south of 36° latitude, and that part of Supervisorial District 2 north of 35° latitude, in Coconino County, Ariz.

Yuma, Ariz.. That part of Yuma County, Ariz., lying west of 114° longitude and south of 33° latitude.

Barstow, Calif.. The townships of Barstow and Yermo; and that part of Belleville Township bounded on the east by the eastern limit of Range 5 East, on the south by the southern limit of Township 8 North, and on the west and north by the Belleville Township line; in San Bernardino County, Calif.

Camp Roberts, Calif.. All of San Luis Obispo County except Nipomo Township, Calif.

Pittsburg-Camp Stoneman, Calif.. Townships 5, 6, 8, 9, 13, 16, and 17, including the cities of Antioch, Brentwood, Concord and Pittsburg, in Contra Costa County, Calif.

Dover, Del.. Kent County and the city of Milford, Del.

Pensacola, Fla.. Escambia and Santa Rosa Counties, Fla.

Braidwood-Joliet, Ill.. Will County, except that portion of the village of Steger located therein, and the village of Crete, Ill.

Camp Atterbury, Ind.. Bartholomew, Brown, Johnson, Morgan, Shelby, and Jackson Counties, Ind.

Fort Knox, Ky.. Magisterial Districts 1, 4, 5, 6 in Hardin County; Magisterial Districts 1, 2, 3, 4, in Meade County; and Magisterial Districts 1 and 4 in Bullitt County, Ky.

Camp Polk, La.. Vernon Parish, and Wards 2, 3, 4, 5, 7 and 8, including Merryville Town and De Ridder City, in Beauregard Parish, La.

Lake Charles, La.. Calcasieu Parish, including the city of Lake Charles, and Wards 1 and 6 in Beauregard Parish, La.

Presque Isle-Limestone, Maine: In Aroostook County, the towns of Ashland, Caribou, Castle Hill, Easton, Fort Fairfield, Limestone, Mapleton, Mars Hill, Van Buren, Washburn, and Westfield; the plantations of Caswell and Hamlin; and the city of Presque Isle; Maine.

Bainbridge-Elkton, Md.. Cecil County, Md.

Fort Leonard Wood, Mo.. Laclede, Phelps and Pulaski Counties, Mo.

Knob Noster-Sedalia, Mo.. Johnson and Pettis Counties, and the township of Windsor and city of Windsor in Henry County, Mo.

Sidney, Nebr.. Cheyenne County, Nebr.

Hawthorne, Nev.. Hawthorne Township in Mineral County, Nev.

Camp Lejeune, N. C.. Onslow County, N. C.

Portsmouth-Chillicothe, Ohio: Scioto, Pike, Ross, and Jackson Counties, Ohio.

Parris Island, S. C.. Beaufort County, and that part of the town of Yemassee in Hampton County, S. C.

Del Rio, Tex.. Justice Precinct 1 in Val Verde County, Tex.

Quantico, Va.. Prince William County (except the Districts of Brentsville, Gainesville, and Manassas); Stafford County; and the independent city of Fredericksburg; Va.

which areas were certified as critical defense housing areas prior to the date of enactment of the Housing and Rent Act of 1953, the undersigned find that the requirements for certification under section 204 (1) of the Housing and Rent Act of 1947, as amended, exist in said areas.

Therefore, pursuant to section 204 (f) of the Housing and Rent Act, as amended, and Executive Order 10456 of May 27, 1953, the undersigned jointly determine that the aforementioned areas meet the requirements for certification as contained in said act.

C. E. WILSON,
Secretary of Defense.
ARTHUR S. FLEMMING,
Director
Office of Defense Mobilization.

[F. R. Doc. 53-6672; Filed, July 29, 1953; 8:49 a. m.]

SECURITIES AND EXCHANGE COMMISSION

[File No. 1-3237]

ADOLF GOBEL, INC.

ORDER SUMMARILY SUSPENDING TRADING

At a regular session of the Securities and Exchange Commission held at its office in the city of Washington, D. C., on the 24th day of July A. D. 1953.

The Commission by order adopted on March 13, 1953, pursuant to section 19 (a) (4) of the Securities Exchange Act of 1934, having summarily suspended trading in the $1 par value common stock of Adolf Gobel, Inc., on the American Stock Exchange for a period of ten days from that date, and subsequently having entered additional orders further suspending such trading in order to prevent fraudulent, deceptive, or manipulative acts or practices; and

The Commission being of the opinion that the public interest requires the summary suspension of trading in such security on that Exchange and that such action is necessary and appropriate for the protection of investors; and

The Commission being of the opinion that such suspension is necessary in order to prevent fraudulent, deceptive, or manipulative acts or practices, with the result that it will be unlawful under section 15 (c) (2) of the Securities Exchange Act of 1934 and the Commission's Rule X-15C2-2 thereunder for any broker or dealer to make use of the mails or of any means or instrumentality of interstate commerce to effect any transaction in, or to induce or attempt to induce the purchase or sale of, such security otherwise than on a national securities exchange.

It is ordered, Pursuant to section 19 (a) (4) of the Securities Exchange Act of 1934, that trading in said securities on the American Stock Exchange be summarily suspended in order to prevent fraudulent, deceptive, or manipulative acts or practices, effective at the opening of the trading session on said Exchange on July 27, 1953, for a period of ten days.

By the Commission.

[SEAL] ORVAL L. DUBOIS,
Secretary.

[F. R. Doc. 53-6666; Filed, July 29, 1953; 8:48 a. m.]

[File No. 70-3034]

WISCONSIN MICHIGAN POWER CO.

ORDER GRANTING EXEMPTION WITH RESPECT TO ISSUANCE OF PURCHASE CONTRACT EVIDENCING INDEBTEDNESS

JULY 24, 1953.

Wisconsin Michigan Power Company ("the Company"), a public utility subsidiary of Wisconsin Electric Power Company a registered holding company, has filed with this Commission an application and an amendment thereto pursuant to the Public Utility Holding Company Act of 1935 ("the act") with respect to the following proposed transaction:

On February 23, 1953, the Company entered into a contract with Kingsford Chemical Co., a non-affiliate, for the purchase of certain hydro-electric generating facilities on the Menominee River, a boundary stream between the states of Michigan and Wisconsin. The contract itself, unaccompanied by collateral notes or other form of negotiable paper, both evidences and secures the purchase price of $1,522,000, which is payable in monthly installments over a twelve-year period. Upon obtaining the requisite regulatory approvals, the Company proposes to take possession of the property and to proceed with the execution of the contract.

The Company expresses the view that the purchase contract is not a security within the meaning of section 2 (a) (16) of the act; but if mistaken in such view, it requests an exemption from the requirements of section 6 (a) pursuant to the third sentence of section 6 (b) of the act, and also a finding that the competitive bidding requirements of Rule U-50 are not appropriate to said transaction, pursuant to subparagraph (a) (5) thereof.

Due notice of the filing of said application having been given, and a hearing not having been requested of or ordered by the Commission; and

It appearing to the Commission that the issuance of said purchase contract is solely for the purpose of financing the business of the Company, and that it has been expressly authorized by the Public Service Commission of Wisconsin, in which State the Company is organized and doing business, and likewise by the Michigan Public Service Commission;

and that both of said State commissions have held said purchase contract to be a security within the meaning of their respective statutes; and

The Commission deeming it unnecessary for present purposes to determine whether or not said purchase contract constitutes a security within the meaning of section 2 (a) (16) of the act and being of the opinion that if the contract is a security that the issuance and sale thereof should be exempt pursuant to the provisions of section 6 (b) of the act and applicant's request for an exemption from the requirements of Rule U-50 should be granted:

It is ordered, That, to the extent of our jurisdiction in this matter, the application is hereby granted forthwith subject to the terms and conditions prescribed in Rule U-24.

By the Commission.

[SEAL] ORVAL L. DUBOIS,
Secretary.

[F. R. Doc. 53-6385; Filed, July 29, 1953; 8:48 a. m.]